

The Constitutions of
California
and the United States with
Related Documents

2011-12 Edition

Cover: Publication cover celebrates the dual centennial anniversaries of Women's Suffrage in California and the official adoption of the State Flag in 1911. Images Courtesy of the California History Room, California State Library, Sacramento, California.

CONSTITUTION OF THE UNITED STATES

CONSTITUTION OF THE STATE OF CALIFORNIA, 1879

As Last Amended November 2, 2010

and

Related Documents

2011–12

CALIFORNIA STATE LEGISLATURE

LT. GOVERNOR GAVIN NEWSOM
President of the Senate

SENATOR DARRELL STEINBERG
President pro Tempore of the Senate

SENATOR BOB DUTTON
Minority Floor Leader

GREGORY P. SCHMIDT
Secretary of the Senate

HON. JOHN A. PÉREZ
Speaker of the Assembly

HON. FIONA MA
Speaker pro Tempore

HON. CONNIE CONWAY
Minority Floor Leader

E. DOTSON WILSON
Chief Clerk of the Assembly





THE STATE FLAG

The Bear Flag was designated California's State Flag by legislative enactment in 1911. It is patterned after the historic flag flown at Sonoma on June 14, 1846, by a group of American settlers in revolt against Mexican rule in California. This short-lived revolution ended on July 9, 1846. The general design and details of the Bear Flag are set forth in Section 420 of the Government Code.

FOREWORD

The California Legislature is honored to provide this collection of the fundamental documents of our government. Through days of prosperity and days of challenge, these words create the mechanisms which protect our rights, channel our common aspirations, and maintain the ideal of a more perfected society to come.

Our national constitution contains the most eloquent statement of human rights ever devised. Our state constitution reflects the efforts of our people to both support and limit the ambitions of those they elect to serve.

The supporting documents of treaties, compacts, and mutual agreements constitute a record of where we were, where we are, and what we hope to be in our long historical march.

What is written here is still alive. It dictates the framework of the laws that bind us yet always confirms our right to move in new directions. That is the genius of our system: our government is “we the people.”

GREGORY P. SCHMIDT
Secretary of the Senate

E. DOTSON WILSON
Chief Clerk of the Assembly

March 2011



The design for the Great Seal of the State of California was adopted at the Constitutional Convention in 1849. Thirty-one stars are displayed, one for each state which comprised the Union following the admission of California September 9, 1850. Beneath these stars appears the motto, *Eureka* (in Greek, “I have found it!”). The peaks of the Sierra Nevada stand for the grandeur of nature. Shipping on San Francisco Bay typifies commerce. A miner laboring with pick, rocker, and pan represents industry. Agricultural wealth is seen in a sheaf of wheat and clusters of grapes. Keeping watch over this tableau is the armored figure of Minerva who, in classical Roman mythology, was the goddess of wisdom. Like the political birth of California, she was born full grown from the brain of Jupiter, father of the gods and guardian of law and order. At her feet stands a grizzly bear, independent and formidable, symbolizing the State of California.



THE SEAL OF THE SENATE

The Senate Seal is circular in shape, and the border bears the phrase "Seal of the Senate of the State of California." The center features a quill pen placed diagonally across an open scroll. On the top of the scroll is inscribed "LEGIS" (law) and the Roman numerals MDCCCL, designating 1850, the year California was admitted to the Union. Surrounding the pen and scroll is a cluster of California live oak leaves and acorns.

The Senate adopted the seal in 1967.



THE ASSEMBLY SEAL

The Seal of the Assembly of the State of California was proposed by the Honorable Leo J. Ryan, Assemblyman from the 27th District in San Mateo County, and adopted by the full Assembly in 1967. The official state colors, blue and gold, were used as a background. The "Golden Poppy," the State flower, and the California Grizzly Bear, which are traditional emblems of California, also appear on the Assembly Seal. The gavel in the upper left-hand corner and the Corinthian column in the lower right-hand corner are symbolic of the legislative power of the state. The palm tree and the mountains are representative of the southern and northern parts of our state, respectively. The motto of the California State Assembly is emblazoned on the Seal, "LEGISLATORUM EST JUSTAS LEGES CONDERE" and indicates "It is the duty of the Legislature to make just laws."



Senator Darrell Steinberg
President pro Tempore



Senator Ellen M. Corbett
Majority Floor Leader



Senator Bob Dutton
Minority Floor Leader



THE SENATE RULES COMMITTEE

From left to right: Senator Kevin de León; Senator Jean Fuller; Senator Darrell Steinberg (Chair); Senator Tom Harman (Vice Chair); Senator Elaine Alquist



John A. Pérez
Speaker of the Assembly



Connie Conway
Minority Floor Leader



ASSEMBLY RULES COMMITTEE—2011

From left to right: Assembly Members D. Williams; B. Hueso; B. Butler; L. Alejo; M. Davis; W. Carter; Chief Clerk E.D. Wilson; Secretary A. McCabe; Chair N. Skinner; Chief Administrative Officer J. Waldie; Sergeant at Arms R. Pane; Vice Chair J. Silva; Assembly Members C. Hagman; S. Knight; T. Donnelly; and J. Nielsen
(not shown: T. Mendoza)

CONTENTS

	<i>Page</i>
Magna Carta.....	3
Mayflower Compact.....	13
Declaration of Rights of 1765.....	14
Declaration of Rights of 1774.....	16
Declaration of Independence	20
Articles of Confederation.....	24
Constitution of the United States	33
Amendments	54
Index to U.S. Constitution	65
Treaty of Guadalupe Hidalgo.....	75
Act for the Admission of California Into the Union	91
Constitutional History of California	95
The California Constitution Revision Commission	131
Constitution of the State of California—1879	147
Constitutional Amendments Approved at Statewide Elections	
May 2009–November 2010	149
Index to California Constitution	335
Appendix.....	413

Magna Carta

1215

Mayflower Compact

1620

Declarations of Rights

1765 and 1774

The Declaration of Independence

1776

Articles of Confederation

1778

Magna Carta—1215

THE GREAT CHARTER OF ENGLISH LIBERTY, GRANTED BY KING JOHN AT RUNNYMEDE, JUNE 15. A. D. 1215

(From "Select Historical Documents of the Middle Ages," as translated from "Stubb's Charters" by Ernest F. Henderson.)

John, by the grace of God king of England, lord of Ireland, duke of Normandy and Aquitaine, count of Anjou: to the archbishops, bishops, abbots, earls, barons, justices, foresters, sheriffs, prevosts, serving men, and to all his bailiffs and faithful subjects, greeting. Know that we, by the will of God and for the safety of our soul, and of the souls of all our predecessors and our heirs, to the honour of God and for the exalting of the holy church and the bettering of our realm: by the counsel of our venerable fathers Stephen archbishop of Canterbury, primate of all England and cardinal of the holy Roman church: of Henry archbishop of Dublin: of the bishops William of London, Peter of Winchester, Jocelin of Bath and Glastonbury, Hugo of Lincoln, Walter of Worcester, William of Coventry and Benedict of Rochester: of master Pandulf, subdeacon and of the household of the lord pope; of brother Aymeric, master of the knights of the Temple in England; and of the noble men, William Marshall earl of Pembroke, William earl of Salisbury, William earl of Warren, William earl of Arundel, Alan de Galway constable of Scotland, Warin son of Gerold, Peter son of Herbert, Hubert de Burgh seneschal of Poictiers, Hugo de Neville, Matthew son of Herbert, Thomas Basset, Alan Basset, Philip d'Aubigni, Robert de Ropelay, John Marshall, John son of Hugo, and others of our faithful subjects:

1. First of all have granted to God, and, for us and for our heirs forever, have confirmed, by this our present charter, that the English church shall be free and shall have its rights intact and its liberties uninfringed upon. And thus we will that it be observed. As is apparent from the fact that we, spontaneously and of our own free will, before discord broke out between ourselves and our barons, did grant and by our charter confirm—and did cause the lord pope Innocent III, to confirm—freedom of elections, which is considered most important and most necessary to the church of England. Which charter both we ourselves shall observe, and we will that if be observed with good faith by our heirs forever. We have also granted to all free men of our realm, on the part of ourselves and our heirs forever, all the subjoined liberties, to have and to hold, to them and to their heirs, from us and from our heirs:

2. If any one of our earls or barons, or of others holding from us in chief through military service, shall die; and if, at the time of his death, his heir be of full age and owe a relief: he shall have his inheritance by paying the old relief;—the heir, namely, or the heirs of an earl, by paying one hundred pounds for the whole barony of an earl; the heir or heirs of a baron, by paying one hundred pounds for the whole barony; the heir or heirs of a knight, by paying one hundred shillings at most for a whole knight's fee; and he who shall owe less shall give less, according to the ancient custom of fees.

3. But if the heir of any of the above persons shall be under age and in wardship,—when he comes of age he shall have his inheritance without relief and without fine.

4. The administrator of the land of such heir who shall be under age shall take none but reasonable issues from the land of the heir, and reasonable customs and services: and this without destruction and waste of men or goods. And if we shall have committed the custody of any such land to the sheriff or to any other man who ought to be responsible to us for the issues of it, and he cause destruction or waste to what is in his charge: we will fine him, and the land shall be handed over to two lawful and discreet men of that fee who shall answer to us, or to him to whom we shall have referred them, regarding those issues. And if we shall have given or sold to any one the custody of any such land, and he shall have caused destruction or waste to it,—he shall lose that custody, and it shall be given to two lawful and discreet men of that fee, who likewise shall answer to us, as has been explained.

5. The administrator, moreover, so long as he may have the custody of the land, shall keep in order, from the issues of that land, the houses, parks, warrens, lakes, mills, and other things pertaining to it. And he shall restore to the heir when he comes to full age, his whole land stocked with ploughs and wainnages, according as the time of the wainnage requires and the issues of the land will reasonably permit.

6. Heirs may marry without disparagement; so, nevertheless, that, before the marriage is contracted, it shall be announced to the relations by blood of the heir himself.

7. A widow, after the death of her husband, shall straightway, and without difficulty, have her marriage portion and her inheritance, nor shall she give any thing in return for her dowry, her marriage portion, or the inheritance which belonged to her, and which she and her husband held on the day of the death of that husband. And she may remain in the house of her husband, after his death, for forty days; within which her dowry shall be paid over to her.

8. No widow shall be forced to marry when she prefers to live without a husband; so, however, that she gives security not to marry without our consent, if she hold from us, or the consent of the lord from whom she holds, if she hold from another.

9. Neither we nor our bailiffs shall seize any revenue for any debt, so long as the chattels of the debtor suffice to pay the debt; nor shall the sponsors of that debtor be distrained so long as that chief debtor has enough to pay the debt. But if the chief debtor fail in paying the debt, not having the wherewithal to pay it, the sponsors shall answer for the debt. And, if they shall wish, they may have the lands and revenues of the debtor until satisfaction shall have been given them for the debt previously paid for him; unless the chief debtor shall show that he is quit in that respect towards those same sponsors.

10. If any one shall have taken any sum, great or small, as a loan from the money-lenders, and shall die before that debt is paid,—that debt shall not bear interest so long as the heir, from whomever he may hold, shall be under age. And if the debt fall into our hands, we shall take nothing save the chattel contained in the deed.

11. And if any one dies owing a debt to the money-lenders, his wife shall have her dowry, and shall restore nothing of that debt. But if there shall remain children of that dead man, and they shall be under age, the necessaries shall be provided for them according to the nature of the dead man's holding; and, from the residue, the debt shall be paid, saving the service due to the lords. In like manner shall be done concerning debts that are due to others besides money-lenders.

12. No scutage or aid shall be imposed in our realm unless by the common counsel of our realm; except for redeeming our body, and knighting our eldest son, and marrying once our eldest daughter. And for these purposes there shall only be given a reasonable aid. In like manner shall be done concerning the aids of the city of London.

13. And the city of London shall have all its old liberties and free customs as well by land as by water. Moreover we will and grant that all other cities and burroughs, and towns and ports, shall have all their liberties and free customs.

14. And, in order to have the common counsel of the realm in the matter of assessing an aid otherwise than in the aforesaid cases, or of assessing a scutage—we shall cause, under seal through our letters, the archbishops, bishops, abbots, earls, and greater barons to be summoned for a fixed day—for a term, namely, at least forty days distant,—and for a fixed place. And, moreover, we shall cause to be summoned in general, through our sheriffs and bailiffs, all those who hold of us in chief. And in all those letters of summons we shall express the cause of the summons. And when a summons has thus been made, the business shall be proceeded with on the day appointed according to the counsel of those who shall be present, even though not all shall come who were summoned.

15. We will not allow any one henceforth to take an aid from his free-men save for the redemption of his body, and the knighting of his eldest

son, and the marrying, once, of his eldest daughter: and, for these purposes, there shall only be given a reasonable aid.

16. No one shall be forced to do more service for a knight's fee, or for another free holding, than is due from it.

17. Common pleas shall not follow our court but shall be held in a certain fixed place.

18. Assizes of novel disseisin, of mort d'ancestor, and of darrein presentment shall not be held save in their own counties, and in this way: We, or our chief justice, if we shall be absent from the kingdom, shall send two justices through each county four times a year; they, with four knights from each county, chosen by the county, shall hold the aforesaid assizes in the county, and on the day and at the place of the county court.

19. And if on the day of the county court the aforesaid assizes can not be held, a sufficient number of knights and free tenants, from those who were present at the county court on that day, shall remain, so that through them the judgments may be suitably given, according as the matter may have been great or small.

20. A freeman shall only be amerced for a small offence according to the measure of that offence. And for a great offence he shall be amerced according to the magnitude of the offence, saving his contencement; and a merchant, in the same way, saving his merchandize. And a villein, in the same way, if he fall under our mercy, shall be amerced saving his wainnage. And none of the aforesaid fines shall be imposed save upon oath of upright men from the neighbourhood.

21. Earls and barons shall not be amerced save through their peers, and only according to the measure of the offence.

22. No clerk shall be amerced for his lay tenement except according to the manner of the other persons aforesaid; and not according to the amount of his ecclesiastical benefice.

23. Neither a town nor a man shall be forced to make bridges over the rivers, with the exception of those who, from of old and of right ought to do it.

24. No sheriff, constable, coroners, or other bailiffs of ours shall hold the pleas of our crown.

25. All counties, hundreds, wapentakes, and trithings—our demesne manors being excepted—shall continue according to the old farms, without any increase at all.

26. If any one holding from us a lay fee shall die, and our sheriff or bailiff can show our letters patent containing our summons for the debt which the dead man owed to us,—our sheriff or bailiff may be allowed to attach and enroll the chattels of the dead man to the value of that debt, through view of lawful men; in such way, however, that nothing shall be removed thence until the debt is paid which was plainly owed to us. And the residue shall be left to the executors that they may carry out the will of the dead

man. And if nothing is owed to us by him, all the chattels shall go to the use prescribed by the deceased, saving their reasonable portions to his wife and children.

27. If any freeman shall have died intestate his chattels shall be distributed through the hands of his near relatives and friends, by view of the church; saving to any one the debts which the dead man owed him.

28. No constable or other bailiff of ours shall take the corn or other chattels of any one except he straightway give money for them, or can be allowed a respite in that regard by the will of the seller.

29. No constable shall force any knight to pay money for castleward if he be willing to perform that ward in person, or—he for a reasonable cause not being able to perform it himself—through another proper man. And if we shall have led or sent him on a military expedition, he shall be quit of ward according to the amount of time during which, through us, he shall have been in military service.

30. No sheriff nor bailiff of ours, nor any one else, shall take the horses or carts of any freeman for transport, unless by the will of that freeman.

31. Neither we nor our bailiffs shall take another's wood for castles or for other private uses, unless by the will of him to whom the wood belongs.

32. We shall not hold the lands of those convicted of felony longer than a year and a day; and then the lands shall be restored to the lords of the fiefs.

33. Henceforth all the weirs in the Thames and Medway, and throughout all England, save on the sea-coast, shall be done away with entirely.

34. Henceforth the writ which is called *Praecepse* shall not be served on any one for any holding so as to cause a free man to lose his court.

35. There shall be one measure of wine throughout our whole realm, and one measure of ale and one measure of corn—namely, the London quart;—and one width of dyed and russet and hauberk cloths—namely, two ells below the selvage. And with weights, moreover, it shall be as with measures.

36. Henceforth nothing shall be given or taken for a writ of inquest in a matter concerning life or limb; but it shall be conceded gratis, and shall not be denied.

37. If any one hold of us in fee-farm, or in socage, or in burkage, and hold land of another by military service, we shall not, by reason of that fee-farm, or socage, or burkage, have the wardship of his heir or of his land which is held in fee from another. Nor shall we have the wardship of that fee-farm, or socage, or burkage unless that fee-farm owe military service. We shall not, by reason of some petit-serjeanty which some one holds of us through the service of giving us knives or arrows or the like, have the wardship of his heir or of the land which he holds of another by military service.

38. No bailiff, on his own simple assertion, shall henceforth put any one to his law, without producing faithful witnesses in evidence.

39. No freeman shall be taken, or imprisoned, or disseized, or outlawed, or exiled, or in any way harmed—nor will we go upon or send upon him—save by the lawful judgment of his peers or by the law of the land.

40. To none will we sell, to none deny or delay, right or justice.

41. All merchants may safely and securely go out of England, and come into England, and delay and pass through England, as well by land as by water, for the purpose of buying and selling, free from all evil taxes, subject to the ancient and right customs—save in time of war, and if they are of the land at war against us. And if such be found in our land at the beginning of the war, they shall be held, without harm to their bodies and goods, until it shall be known to us or our chief justice how the merchants of our land are to be treated who shall, at that time, be found in the land at war against us. And if ours shall be safe there, the others shall be safe in our land.

42. Henceforth any person, saving fealty to us, may go out of our realm and return to it, safely and securely, by land and by water, except perhaps for a brief period in time of war, for the common good of the realm. But prisoners and outlaws are excepted according to the law of the realm; also people of a land at war against us, and the merchants, with regard to whom shall be done as we have said.

43. If any one hold from any escheat—as from the honour of Wallingford, Nottingham, Boloin, Lancaster, or the other escheats which are in our hands and are baronies—and shall die, his heir shall not give another relief, nor shall he perform for us other service than he would perform for a baron if that barony were in the hand of a baron; and we shall hold it in the same way in which the baron has held it.

44. Persons dwelling without the forest shall not henceforth come before the forest justices, through common summonses, unless they are impleaded or are the sponsors of some person or persons attached for matters concerning the forest.

45. We will not make men justices, constables, sheriffs, or bailiffs, unless they are such as know the law of the realm, and are minded to observe it rightly.

46. All barons who have founded abbeys for which they have charters of the kings of England, or ancient right of tenure, shall have, as they ought to have, their custody when vacant.

47. All forests constituted as such in our time shall straightway be annulled; and the same shall be done for river banks made into places of defense by us in our time.

48. All evil customs concerning forests and warrens, and concerning foresters and warreners, sheriffs and their servants, river banks and their guardians, shall straightway be inquired into in each county, through

twelve sworn knights from that county, and shall be eradicated by them, entirely, so that they shall never be renewed, within forty days after the inquest has been made; in such manner that we shall first know about them, or our justice if we be not in England.

49. We shall straightway return all hostages and charters which were delivered to us by Englishmen as a surety for peace or faithful service.

50. We shall entirely remove from their bailwicks the relatives of Gerard de Athyes, so that they shall henceforth have no bailwick in England: Engelard de Cygnes, Andrew Peter and Gyon de Chanceles, Gyon de Cygnes, Geoffrey de Martin and his brothers, Philip Mark and his brothers, and Geoffrey his nephew, and the whole following of them.

51. And straightway after peace is restored we shall remove from the realm all the foreign soldiers, crossbowmen, servants, hirelings, who may have come with horses and arms to the harm of the realm.

52. If any one shall have been disseized by us, or removed, without a legal sentence of his peers, from his lands, castles, liberties or lawful right, we shall straightway restore them to him. And if a dispute shall arise concerning this matter it shall be settled according to the judgment of the twenty-five barons who are mentioned below as sureties for the peace. But with regard to all those things of which any one was, by king Henry our father or king Richard our brother, disseized or dispossessed without legal judgment of his peers, which we have in our hand or which others hold, and for which we ought to give a guarantee: We shall have respite until the common term for crusaders. Except with regard to those concerning which a plea was moved, or an inquest made by our order, before we took the cross. But when we return from our pilgrimage, or if, by chance, we desist from our pilgrimage, we shall straightway then show full justice regarding them.

53. We shall have the same respite, moreover, and in the same manner, in the matter of showing justice with regard to forests to be annulled and forests to remain, which Henry our father or Richard our brother constituted; and in the matter of wardships of lands which belong to the fee of another—wardships of which kind we have hitherto enjoyed by reason of the fee which some one held from us in military service;—and in the matter of abbeys founded in the fee of another than ourselves—in which the lord of the fee may say that he has jurisdiction. And when we return, or if we desist from our pilgrimage, we shall straightway exhibit full justice to those complaining with regard to these matters.

54. No one shall be taken or imprisoned on account of the appeal of a woman concerning the death of another than her husband.

55. All fines imposed by us unjustly and contrary to the law of the land, and all amerciaments made unjustly and contrary to the law of the land, shall be altogether remitted, or it shall be done with regard to them according to the judgment of the twenty five barons mentioned below as

sureties for the peace, or according to the judgment of the majority of them together with the aforesaid Stephen archbishop of Canterbury, if he can be present, and with others whom he may wish to associate with himself for this purpose. And if he can not be present, the affair shall nevertheless proceed without him; in such way that, if one or more of the said twenty five barons shall be concerned in a similar complaint, they shall be removed as to this particular decision, and, in their place, for this purpose alone, others shall be substituted who shall be chosen and sworn by the remainder of those twenty five.

56. If we have disseized or dispossessed Welshmen of their lands or liberties or other things without legal judgment of their peers, in England or in Wales,—they shall straightway be restored to them. And if a dispute shall arise concerning this, then action shall be taken upon it in the March through judgment of their peers—concerning English holdings according to the law of England, concerning Welsh holdings according to the law of Wales, concerning holdings in the March according to the law of the March. The Welsh shall do likewise with regard to us and our subjects.

57. But with regard to all those things of which any one of the Welsh was, by king Henry our father or king Richard our brother, disseized or dispossessed without legal judgment of his peers, which we have in our hand or which others hold, and for which we ought to give a guarantee: we shall have respite until the common term for crusaders. Except with regard to those concerning which a plea was moved, or an inquest made by our order, before we took the cross. But when we return from our pilgrimage, or if, by chance, we desist from our pilgrimage, we shall straightway then show full justice regarding them, according to the laws of Wales and the aforesaid districts.

58. We shall straightway return the son of Llewelin and all the Welsh hostages, and the charters delivered to us as surety for the peace.

59. We shall act towards Alexander king of the Scots regarding the restoration of his sisters, and his hostages, and his liberties and his lawful right, as we shall act towards our other barons of England; unless it ought to be otherwise according to the charters which we hold from William, his father, the former king of the Scots. And this shall be done through judgment of his peers in our court.

60. Moreover all the subjects of our realm, clergy as well as laity, shall, as far as pertains to them, observe, with regard to their vassals, all these aforesaid customs and liberties which we have decreed shall, as far as pertains to us, be observed in our realm with regard to our own.

61. Inasmuch as, for the sake of God, and for the bettering of our realm, and for the more ready healing of the discord which has arisen between us and our barons, we have made all these aforesaid concessions.—wishing them to enjoy for ever entire and firm stability, we make and grant to them the following security: that the barons, namely, may elect at their pleasure

twenty five barons from the realm, who ought, with all their strength, to observe, maintain and cause to be observed, the peace and privileges which we have granted to them and confirmed by this our present charter. In such wise, namely, that if we, or our justice, or our bailiffs, or any one of our servants shall have transgressed against any one in any respect, or shall have broken some one of the articles of peace or security, and our transgression shall have been shown to four barons of the aforesaid twenty five: those four barons shall come to us, or, if we are abroad, to our justice, showing to us our error: and they shall ask us to cause that error to be amended without delay. And if we do not amend that error, or, we being abroad, if our justice do not amend it within a term of forty days from the time when it was shown to us or, we being abroad, to our justice: the aforesaid four barons shall refer the matter to the remainder of the twenty five barons, and those twenty five barons, with the whole land in common, shall distrain and oppress us in every way in their power,—namely, by taking our castles, lands and possessions, and in every other way that they can, until amends shall have been made according to their judgment. Saving the persons of ourselves, our queen and our children. And when amends shall have been made they shall be in accord with us as they had been previously. And whoever of the land wishes to do so, shall swear that in carrying out all the aforesaid measures he will obey the mandates of the aforesaid twenty five barons, and that, with them, he will oppress us to the extent of his power. And, to any one who wishes to do so, we publicly and freely give permission to swear; and we will never prevent any one from swearing. Moreover, all those in the land who shall be unwilling, themselves and of their own accord, to swear to the twenty five barons as to distraining and oppressing us with them: such ones we shall make to swear by our mandate, as has been said. And if any one of the twenty five barons shall die, or leave the country, or in any other way be prevented from carrying out the aforesaid measures,—the remainder of the aforesaid twenty five barons shall choose another in his place, according to their judgment, who shall be sworn in the same way as the others. Moreover, in all things entrusted to those twenty five barons to be carried out, if those twenty five shall be present and chance to disagree among themselves with regard to some matter, or if some of them, having been summoned, shall be unwilling or unable to be present: that which the majority of those present shall decide or decree shall be considered binding and valid, just as if all the twenty five had consented to it. And the aforesaid twenty five shall swear that they will faithfully observe all the foregoing, and will cause them to be observed to the extent of their power. And we shall obtain nothing from any one, either through ourselves or through another, by which any of those concessions and liberties may be revoked or diminished. And if any such thing shall have been obtained, it shall be vain and invalid, and we shall never make use of it either through ourselves or through another.

62. And we have fully remitted to all, and pardoned, all the ill-will, anger and rancour which have arisen between us and our subjects, clergy and laity, from the time of the struggle. Moreover we have fully remitted to all, clergy and laity, and—as far as pertains to us—have pardoned fully all the transgressions committed, on the occasion of that same struggle, from Easter of the sixteenth year of our reign until the re-establishment of peace. In witness of which, moreover, we have caused to be drawn up for them letters patent of lord Stephen, archbishop of Canterbury, lord Henry, archbishop of Dublin, and the aforesaid bishops and master Pandulf, regarding that surety and the aforesaid concessions.

63. Wherefore we will and firmly decree that the English church shall be free, and that the subjects of our realm shall have and hold all the aforesaid liberties, rights and concessions, duly and in peace, freely and quietly, fully and entirely, for themselves and their heirs, from us and our heirs, in all matters and in all places, forever, as has been said. Moreover it has been sworn, on our part as well as on the part of the barons, that all these above mentioned provisions shall be observed with good faith and without evil intent. The witnesses being the above mentioned and many others. Given through our hand, in the plain called Runnimede between Windsor and Stanes, on the fifteenth day of June, in the seventeenth year of our reign.

The Mayflower Compact—1620

IN THE NAME OF GOD, AMEN.

We whose names are underwritten, the loyal subjects of our dread Sovereign Lord King James, by the Grace of God of Great Britain, France, and Ireland King, Defender of the Faith, etc.

Having undertaken, for the Glory of God and advancement of the Christian Faith and Honour of our King and Country, a Voyage to plant the First Colony in the Northern Parts of Virginia, do by these presents solemnly and mutually in the presence of God and one of another, Covenant and Combine ourselves together into a Civil Body Politic, for our better ordering and preservation and furtherance of the ends aforesaid; and by virtue hereof to enact, constitute and frame such just and equal Laws, Ordinances, Acts, Constitutions and Offices, from time to time, as shall be thought most meet and convenient for the general good of the Colony, unto which we promise all due submission and obedience. In witness whereof we have hereunder subscribed our names at Cape Cod, the 11th of November, in the year of the reign of our Sovereign Lord King James, of England, France and Ireland the eighteenth, and of Scotland the fifty-fourth. Anno Domini 1620.

JOHN CARVER	EDWARD TILLEY	DEGORY PRIEST
WILLIAM BRADFORD	JOHN TILLEY	THOMAS WILLIAMS
EDWARD WINSLOW	FRANCIS COOKE	GILBERT WINSLOW
WILLIAM BREWSTER	THOMAS ROGERS	EDMUND MARGESON
ISSAC ALLERTON	THOMAS TINKER	PETER BROWNE
MYLES STANDISH	JOHN RIGDALE	RICHARD BRITTERIDGE
JOHN ALDEN	EDWARD FULLER	GEORGE SOULE
SAMUEL FULLER	JOHN TURNER	RICHARD CLARKE
CHRISTOPHER MARTIN	FRANCIS EATON	RICHARD GARDINER
WILLIAM MULLINS	JAMES CHILTON	JOHN ALLERTON
WILLIAM WHITE	JOHN CRACKSTON	THOMAS ENGLISH
RICHARD WARREN	JOHN BILLINGTON	EDWARD DOTEY
JOHN HOWLAND	MOSES FLETCHER	EDWARD LEISTER
STEPHEN HOPKINS	JOHN GOODMAN	

Declaration of Rights *

In Congress, at New York, October 19, 1765

The Congress...upon mature deliberation, agreed to the following declarations of the rights and grievances of the colonists in America...

The members of this Congress, sincerely devoted, with the warmest sentiments of affection and duty to His Majesty's person and government; inviolably attached to the present happy establishment of the Protestant succession, and with minds deeply impressed by a sense of the present and impending misfortunes of the British colonies on this continent; having considered as maturely as time would permit, the circumstances of the said colonies, esteem it our indispensable duty to make the following declarations, of our humble opinion, respecting the most essential rights and liberties of the colonists, and of the grievances under which they labor, by reason of several late acts of Parliament.

1st. That His Majesty's subjects in these colonies owe the same allegiance to the Crown of Great Britain, that is owing from his subjects born within the realm, and all due subordination to that august body, the Parliament of Great Britain.

2d. That His Majesty's liege subjects in these colonies are entitled to all the inherent rights and privileges of his natural born subjects within the kingdom of Great Britain.

3d. That it is inseparably essential to the freedom of a people, and the undoubted rights of Englishmen, that no taxes should be imposed on them, but with their own consent, given personally, or by their representatives.

4th. That the people of these colonies are not, and from their local circumstances, cannot be represented in the House of Commons in Great Britain.

5th. That the only representatives of the people of these colonies, are persons chosen therein, by themselves; and that no taxes ever have been, or can be constitutionally imposed on them, but by their respective legislatures.

6th. That all supplies to the Crown, being free gifts of the people, it is unreasonable and inconsistent with the principles and spirit of the British constitution, for the people of Great Britain to grant to His Majesty the property of the colonists.

7th. That trial by jury is the inherent and invaluable right of every British subject in these colonies.

* Journal of the Stamp Act Congress, New York, 1765, as printed in the *Republication of the Principles and Acts of the Revolution in America* by Hezekiah Niles (1876).

8th. That the late act of Parliament, entitled, "An act for granting and applying certain stamp duties, and other duties in the British colonies and plantations in America, etc.,," by imposing taxes on the inhabitants of these colonies, and the said act, and several other acts, by extending the jurisdiction of the courts of admiralty beyond its ancient limits, have a manifest tendency to subvert the rights and liberties of the colonists.

9th. That the duties imposed by several late acts of Parliament, from their peculiar circumstances of these colonies, will be extremely burthensome and grievous, and from the scarcity of specie, the payment of them absolutely impracticable.

10th. That as the profits of the trade of these colonies ultimately center in Great Britain, to pay for the manufacturers which they are obliged to take from thence, they eventually contribute very largely to all supplies granted there to the Crown.

11th. That the restrictions imposed by several late acts of Parliament, on the trade of these colonies, will render them unable to purchase the manufactures of Great Britain.

12th. That the increase, prosperity and happiness of these colonies, depend on the full and free enjoyment of their rights and liberties, and an intercourse, with Great Britain, mutually affectionate and advantageous.

13th. That it is the right of the British subjects in these colonies, to petition the King or either house of Parliament.

Lastly, that it is the indispensable duty of these colonies to the best of sovereigns, to the mother country, and to themselves, to endeavor by a loyal and dutiful address to His Majesty, and humble application to both houses of Parliament, to procure the repeal of the act for granting and applying certain stamp duties, of all clauses of any other acts of Parliament, whereby the jurisdiction of the admiralty is extended as aforesaid, and of the other late acts for the restriction of the American commerce.

Declaration of Rights *

In Congress, at Philadelphia, October 14, 1774

Whereas, since the close of the last war, the British Parliament, claiming a power of right to bind the people of America, by statute, in all cases whatsoever, hath in some acts expressly imposed taxes on them, and in others, under various pretenses, but in fact for the purpose of raising a revenue, hath imposed rates and duties payable in these colonies established a board of commissioners, with unconstitutional powers, and extended the jurisdiction of courts of admiralty, not only for collecting the said duties, but for the trial of causes merely arising within the body of a county.

And whereas, in consequence of other statutes, judges, who before held only estates at will in their offices, have been made dependent on the Crown alone for their salaries, and standing armies kept in times of peace:

And whereas, it has lately been resolved in Parliament, that by force of a statute, made in the thirty-fifth year of the reign of King Henry the Eighth, colonists may be transported to England, and tried there upon accusations for treasons and misprisions, or concealments of treasons committed in the colonies, and by a late statute, such trials have been directed in cases therein mentioned.

And whereas, in the last session of Parliament, three statutes were made: one, entitled "An act to discontinue, in such manner and for such time as are therein mentioned, the landing and discharging, lading, or shipping of goods, wares and merchandise, at the town, and within the harbor of Boston, in the province of Massachusetts Bay, in North America"; another, entitled "An act for the better regulating the government of the province of the Massachusetts Bay in New England;" and another, entitled "An act for the impartial administration of justice, in the cases of persons questioned for any act done by them in the execution of the law, or for the suppression of riots and tumults, in the province of the Massachusetts Bay, in New England." And another statute was then made, "for making more effectual provision for the government of the province of Quebec, etc." All which statutes are impolitic, unjust and cruel, as well as unconstitutional, and most dangerous and destructive of American rights.

And whereas, assemblies have been frequently dissolved, contrary to the rights of the people, when they attempted to deliberate on grievances; and their dutiful, humble, loyal, and reasonable petitions to the Crown for redress, have been repeatedly treated with contempt by His Majesty's ministers of state:

* *Journals of the Continental Congress 1774–1789*. Edited from the original records in the Library of Congress by Worthington Chauncy Ford, Chief, Division of Manuscripts. Washington: Government Printing Office, 1904.

The good people of the several colonies of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, New Castle, Kent and Sussex on Delaware, Maryland, Virginia, North Carolina, and South Carolina, justly alarmed at these arbitrary proceedings of Parliament and administration, have severally elected, constituted, and appointed deputies to meet and sit in general congress, in the city of Philadelphia, in order to obtain such establishment, as that their religion, laws, and liberties may not be subverted:

Whereupon the deputies so appointed being now assembled, in a full and free representation of these colonies, taking into their most serious consideration, the best means of attaining the ends aforesaid, do, in the first place, as Englishmen, their ancestors in like cases have usually done, for asserting and vindicating their rights and liberties, declare,

That the inhabitants of the English colonies in North America, by the immutable laws of nature, the principles of the English Constitution, and the several charters or compacts, have the following rights:

Resolved. N. C. D. 1. That they are entitled to life, liberty, and property, and they have never ceded to any sovereign power whatever, a right to dispose of either without their consent.

Resolved. N. C. D. 2. That our ancestors, who first settled these colonies, were at the time of their emigration from the mother country, entitled to all the rights, liberties, and immunities of free and natural born subjects, within the realm of England.

Resolved. N. C. D. 3. That by such emigration they by no means forfeited, surrendered, or lost any of those rights, but that they were, and their descendants now are, entitled to the exercise and enjoyment of all such of them, as their local and other circumstances enable them to exercise and enjoy.

Resolved. 4. That the foundation of English liberty, and of all free government, is a right in the people to participate in their legislative council: and as the English colonists are not represented, and from their local and other circumstances, can not properly be represented in the British Parliament, they are entitled to a free and exclusive power of legislation in their several provincial legislatures, where their right of representation can alone be preserved, in all cases of taxation and internal polity, subject only to the negative of their sovereign, in such manner as has been heretofore used and accustomed. But, from the necessity of the case, and a regard to the mutual interest of both countries, we cheerfully consent to the operation of such acts of the British Parliament, as are bona fide, restrained to the regulation of our external commerce, for the purpose of securing the commercial advantages of the whole empire to the mother country, and the

commercial benefits of its respective members: excluding every idea of taxation, internal or external, for raising a revenue on the subjects in America, without their consent.

Resolved, N. C. D. 5. That the respective colonies are entitled to the common law of England, and more especially to the great and inestimable privilege of being tried by their peers of the vicinage, according to the course of that law.

Resolved, N. C. D. 6. That they are entitled to the benefit of such of the English statutes as existed at the time of their colonization; and which they have, by experience, respectively found to be applicable to their several local and other circumstances.

Resolved, N. C. D. 7. That these, His Majesty's colonies, are likewise entitled to all the immunities and privileges granted and confirmed to them by royal charters, or secured by their several codes of provincial laws.

Resolved, N. C. D. 8. That they have a right peaceably to assemble, consider of their grievances, and petition the King; and that all prosecutions, prohibitory proclamations, and commitments for the same, are illegal.

Resolved, N. C. D. 9. That the keeping a standing army in these colonies, in times of peace, without the consent of the legislature of that colony, in which such army is kept, is against law.

Resolved, N. C. D. 10. It is indispensably necessary to good government, and rendered essential by the English constitution, that the constituent branches of the legislature be independent of each other; that, therefore, the exercise of legislative power in several colonies, by a council appointed, during pleasure by the Crown, is unconstitutional, dangerous, and destructive to the freedom of American legislation.

All and each of which the aforesaid deputies, in behalf of themselves and their constituents, do claim, demand, and insist on, as their indubitable rights and liberties; which can not be legally taken from them, altered or abrogated by any power whatever, without their own consent, by their representatives in their several provincial legislatures.

In the course of our inquiry, we find many infringements and violations of the foregoing rights, which, from an ardent desire, that harmony and mutual intercourse of affection and interest may be restored, we pass over for the present, and proceed to state such acts and measures as have been adopted since the last war, which demonstrate a system formed to enslave America.

Resolved, N. C. D. That the following acts of Parliament are infringements and violations of the rights of the colonists; and that the repeal of them is essentially necessary in order to restore harmony between Great Britain and the American colonies, viz.;

The several acts of 4 Geo. 3. ch. 15, and ch. 34.—5 Geo. 3. ch. 25.—6 Geo. 3. ch. 52.—7 Geo. 3. ch. 41, and ch. 46.—8 Geo. 3. ch. 22, which impose duties for the purpose of raising a revenue in America, extend the

powers of the admiralty courts beyond their ancient limits, deprive the American subject of trial by jury, authorize the judges' certificate to indemnify the prosecutor from damages, that he might otherwise be liable to, requiring oppressive security from a claimant of ships and goods seized, before he shall be allowed to defend his property, and are subversive of American rights.

Also the 12 Geo. 3. ch. 24, entitled "An act for the better securing His Majesty's dock yards, magazines, ships, ammunition, and stores," which declares a new offense in America, and deprives the American subject of a constitutional trial by jury of the vicinage, by authorizing the trial of any person, charged with the committing any offense described in the said act, out of the realm, to be indicted and tried for the same in any shire or country within the realm.

Also the three acts passed in the last session of Parliament, for stopping the port and blocking up the harbor of Boston, for altering the charter and government of the Massachusetts Bay, and that which is entitled "An act for the better administration of justice," etc.

Also the act passed in the same session for establishing the Roman Catholic religion in the province of Quebec, abolishing the equitable system of English laws, and erecting a tyranny there, to the great danger, from so total a dissimilarity of religion, law, and government of the neighboring British colonies, by the assistance of whose blood and treasure the said country was conquered from France.

Also the act passed in the same session for the better providing suitable quarters for officers and soldiers in His Majesty's service in North America.

Also, that the keeping a standing army in several of these colonies, in time of peace, without the consent of the legislature of that colony in which such army is kept, is against law.

To these grievous acts and measures, Americans can not submit, but in hopes that their fellow subjects in Great Britain will, on a revision of them, restore us to that state in which both countries found happiness and prosperity, we have for the present only resolved to pursue the following peaceable measures:

1st. To enter into a non-importation, non-consumption, and non-exportation agreement or association.

2. To prepare an address to the people of Great Britain, and a memorial to the inhabitants of British America, and

3. To prepare a loyal address to His Majesty; agreeable to resolutions already entered into.

The Declaration of Independence*

(Adopted in Congress July 4, 1776)

The Unanimous Declaration of the Thirteen United States of America

When, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed, that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes; and accordingly all experience hath shown that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. —Such has been the patient sufferance of these colonies; and such is now the necessity which constrains them to alter their former systems of government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these states. To prove this, let facts be submitted to a candid world.

He has refused his assent to laws, the most wholesome and necessary for the public good.

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

*The Federal and State Constitutions, Colonial Charters, and Other Organic Law of the United States. Compiled under an order of the United States Senate by Ben Perley Poore, Clerk of Printing Records. Washington: Government Printing Office, 1877.

He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature, a right inestimable to them and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise; the state remaining in the meantime exposed to all the dangers of invasion from without, and convulsions within.

He has endeavored to prevent the population of these states; for that purpose obstructing the laws for naturalization of foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers to harass our people, and eat out their substance.

He has kept among us, in times of peace, standing armies without the consent of our legislature.

He has affected to render the military independent of and superior to the civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his assent to their acts of pretended legislation:

For quartering large bodies of armed troops among us:

For protecting them, by a mock trial, from punishment for any murders which they should commit on the inhabitants of these states:

For cutting off our trade with all parts of the world:

For imposing taxes on us without our consent:

For depriving us in many cases, of the benefits of trial by jury:

For transporting us beyond seas to be tried for pretended offenses:

For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies:

For taking away our charters, abolishing our most valuable laws, and altering fundamentally the forms of our governments:

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here, by declaring us out of his protection and waging war against us.

He has plundered our seas, ravaged our coasts, burned our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries to complete the works of death, desolation and tyranny, already begun with circumstances of cruelty and perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow citizens taken captive on the high seas to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrections amongst us, and has endeavored to bring on the inhabitants of our frontiers, the merciless Indian savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these oppressions we have petitioned for redress in the most humble terms: our repeated petitions have been answered only by repeated injury. A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in attention to our British brethren. We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which, would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity, which denounces our separation, and hold them, as we hold the rest of mankind, enemies in war, in peace friends.

We, therefore, the representatives of the United States of America, in General Congress, assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the name, and by the authority of the good people of these colonies, solemnly publish and declare, that these united colonies are, and of right ought to be free and independent states; that they are absolved from all allegiance to the British Crown, and that all political connection between them and the state of Great Britain, is and ought to be totally dissolved; and that as free and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states may of right do. And for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes and our sacred honor.

JOHN HANCOCK

New Hampshire

JOSIAH BARTLETT
WM. WHIPPLE
MATTHEW THORTON

Massachusetts Bay

SAML. ADAMS
JOHN ADAMS
ROBT. TREAT PAINE
ELBRIDGE GERRY

Rhode Island

STEP. HOPKINS
WILLIAM ELLERY

Connecticut

ROGER SHERMAN
SAM'EL HUNTINGTON
WM. WILLIAMS
OLIVER WOLCOTT

New York

WM. FLOYD
PHIL LIVINGSTON
FRANS. LEWIS
LEWIS MORRIS

New Jersey

RICHD. STOCKTON
JNO. WITHERSPOON
FRAS. HOPKINSON
JOHN HART
ABRA. CLARK

Pennsylvania

ROBT. MORRIS
BENJAMIN RUSH
BENJA. FRANKLIN
JOHN MORTONS
GEO CLYMER

JAS. SMITH

GEO. TAYLOR
JAMES WILSON GEO. ROSS

Delaware

CAESAR RODNEY
GEO. READ
THO. M'KEAN

Maryland

SAMUEL CHASE
WM. PACA
THOS. STONE
CHARLES CARROLL of Carrollton

Virginia

GEORGE WYTHE
RICHARD HENRY LEE
TH. JEFFERSON
BENJA. HARRISON
THOS. NELSON, JR.
FRANCIS LIGHTFOOT LEE
CARTER BRAXTON

North Carolina

WM. HOOPER
JOSEPH HEWES
JOHN PENN

South Carolina

EDWARD RUTLEDGE
THOS. HEYWARD, JUNR.
THOMAS LYNCH, JUNR.
ARTHUR MIDDLETON

Georgia

BUTTON GWINNETT
LYMAN HALL
GEO. WALTON

Articles of Confederation—1778 *

To all to whom these presents shall come, we the undersigned delegates of the states affixed to our names, send greeting:

WHEREAS the delegates of the United States of America in Congress assembled, did, on the fifteenth day of November in the year of our Lord seventeen seventy-seven, and in the second year of the Independence of America, agree to Certain Articles of Confederation and perpetual union between the states of New Hampshire, Massachusetts Bay, Rhode Island, and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia in the words following viz.:.

Articles of Confederation and Perpetual Union Between the States of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia

ARTICLE I. The style of this Confederacy shall be "The United States of America."

ARTICLE II. Each state retains its sovereignty, freedom and independence, and every power, jurisdiction and right which is not by this Confederation expressly delegated to the United States in Congress assembled.

ARTICLE III. The said states hereby severally enter into a firm league of friendship with each other for their common defense, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretense whatever.

ARTICLE IV. The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these states, paupers, vagabonds and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several states; and the people of each state shall have free ingress and regress to and from any other state, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions and restrictions as the inhabitants thereof respectively; provided, that such restrictions shall not extend so far as to prevent the removal of property imported into any state, to any other state of which the owner is an inhabitant; provided also, that no imposition, duties or restriction shall be laid by any state on the property of the United States, or either of them.

**The Federal and State Constitutions, Colonial Charters and Other Organic Laws of the United States.* Compiled under an order of the United States Senate by Ben. Perley Poore, Clerk of Printing Records. Washington: Government Printing Offices, 1877.

If any person guilty of or charged with treason, felony, or other high misdemeanor in any state, shall flee from justice, and be found in any of the United States, he shall upon demand of the governor or executive power of the state from which he fled, be delivered up and removed to the state having jurisdiction of his offense.

Full faith and credit shall be given in each of these states to the records, acts and judicial proceedings of the courts and magistrates of every other state.

ARTICLE V. For the more convenient management of the general interests of the United States, delegates shall be annually appointed in such manner as the legislature of each state shall direct, to meet in Congress on the first Monday in November, in every year, with a power reserved to each state, to recall its delegates, or any of them, at any time within the year, and to send others in their stead, for the remainder of the year.

No state shall be represented in Congress by less than two, nor by more than seven members: and no person shall be capable of being a delegate for more than three years in any term of six years; nor shall any person, being a delegate, be capable of holding any office under the United States, for which he, or another for his benefit receives any salary, fees or emolument of any kind.

Each state shall maintain its own delegates in a meeting of the states, and while they act as members of the committee of the states.

In determining questions in the United States, in Congress assembled, each state shall have one vote.

Freedom of speech and debate in Congress shall not be impeached or questioned in any court, or place out of Congress, and the members of Congress shall be protected in their persons from arrests and imprisonments, during the time of their going to and from, and attendance on Congress, except for treason, felony, or breach of the peace.

ARTICLE VI. No state without the consent of the United States in Congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance or treaty with any king, prince or state; nor shall any person holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office or title of any kind whatever from any king, prince or foreign state; nor shall the United States in Congress assembled, or any of them, grant any title of nobility.

No two or more states shall enter into any treaty, confederation or alliance whatever between them, without the consent of the United States in Congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

No state shall lay any imposts or duties, which may interfere with any stipulations in treaties, entered into by the United States in Congress as-

sembled, with any king, prince or state, in pursuance of any treaties already proposed by Congress, to the courts of France and Spain.

No vessels of war shall be kept up in time of peace by any state, except such number only as shall be deemed necessary by the United States in Congress assembled, for the defense of such state, or its trade; nor shall any body of forces be kept up by any state, in time of peace, except such number only, as in the judgment of the United States, in Congress assembled, shall be deemed requisite to garrison the forts necessary for the defense of such state; but every state shall always keep up a well regulated and disciplined militia, sufficiently armed and accoutered, and shall provide and constantly have ready for use, in public stores, a due number of field pieces and tents, and a proper quantity of arms, ammunition and camp equipage.

No state shall engage in any war without the consent of the United States in Congress assembled, unless such state be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such state, and the danger is so imminent as not to admit of a delay, till the United States in Congress assembled can be consulted: nor shall any state grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war, by the United States in Congress assembled, and then only against the kingdom or state and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the United States in Congress assembled, unless such state be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the United States in Congress assembled shall determine otherwise.

ARTICLE VII. When land forces are raised by any state for the common defense, all officers of or under the rank of colonel, shall be appointed by the Legislature of each state respectively by whom such forces shall be raised, or in such manner as such state shall direct, and all vacancies shall be filled up by the state which first made the appointment.

ARTICLE VIII. All charges of war, and all other expenses that shall be incurred for the common defense or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several states, in proportion to the value of all land within each state, granted to or surveyed for any person, as such land and the buildings and improvements thereon shall be estimated according to such mode as the United States in Congress assembled, shall from time to time direct and appoint.

The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several states within the time agreed upon by the United States in Congress assembled.

ARTICLE IX. The United States in Congress assembled, shall have the sole and exclusive right and power of determining on peace and war except in the cases mentioned in the sixth article—of sending and receiving ambassadors—entering into treaties and alliances; provided that no treaty of commerce shall be made whereby the legislative power of the respective states shall be restrained from imposing such imposts and duties on foreigners, as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever—of establishing rules for deciding in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated—of granting letters of marque and reprisal in times of peace—appointing courts for the trial of piracies and felonies committed on the high seas and establishing courts for receiving and determining finally appeals in all cases of captures, provided that no member of Congress shall be appointed a judge of any of the said courts.

The United States in Congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more states concerning boundary, jurisdiction or any other cause whatever; which authority shall always be exercised in the manner following. Whenever the legislative or executive authority or lawful agent of any state in controversy with another shall present a petition to Congress, stating the matter in question and praying for a hearing, notice thereof shall be given by order of Congress to the legislative or executive authority of the other state in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint by joint consent commissioners or judges to constitute a court for hearing and determining the matter in question: but if they can not agree, Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen: and from that number not less than seven, nor more than nine names, as Congress shall direct, shall in the presence of Congress be drawn out by lot, and the persons whose names shall be so drawn or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination: and if either party shall neglect to attend at the day appointed, without showing reasons, which Congress shall judge sufficient, or being present shall refuse to strike, the Congress shall proceed to nominate three persons out of each state, and the Secretary of Congress shall strike in behalf of such party absent or refusing: and the judgment and sentence of the court to be appointed, in the manner before prescribed, shall be final and conclusive: and if any of the parties shall refuse to submit to the authority of such court, or to appear or

defend their claim or cause, the court shall, nevertheless proceed to pronounce sentence, or judgment, which shall in like manner be final and decisive, the judgment or sentence and other proceedings being in either case transmitted to Congress, and lodged among the acts of Congress for the security of the parties concerned: provided that every commissioner, before he sits in judgment, shall take an oath to be administered by one of the judges of the supreme or superior court of the state where the cause shall be tried, "well and truly to hear and determine the matter in question, according to the best of his judgment, without favor, affection, or hope of reward": provided also that no state shall be deprived of territory for the benefit of the United States.

All controversies concerning the private right of soil claimed under different grants of two or more states, whose jurisdiction as they may respect such lands, and the states which passed such grants are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall on the petition of either party to the Congress of the United States, be finally determined as near as may be in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different states.

The United States in Congress assembled shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective states—fixing the standard of weights and measures throughout the United States—regulating the trade, and managing all affairs with the Indians, not members of any of the states, provided that the legislative right of any state within its own limits be not infringed or violated—establishing and regulating post offices from one state to another, throughout all the United States, and exacting such postage on the papers passing through the same as may be requisite to defray the expenses of the said office—appointing all officers of the land forces, in the service of the United States, excepting regimental officers—appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States—making rules for the government and regulation of the said land and naval forces, and directing their operations.

The United States in Congress assembled shall have authority to appoint a committee, to sit in the recess of Congress, to be denominated "a Committee of the States," and to consist of one delegate from each state; and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States under their direction—to appoint one of their number to preside, provided that no person be allowed to serve in the office of president more than one year in any term of three years; to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses—to borrow money, or emit bills on the

credit of the United States, transmitting every half year to the respective states an account of the sums of money so borrowed or emitted—to build and equip a navy—to agree upon the number of land forces, and to make requisitions from each state for its quota, in proportion to the number of white inhabitants in such state: which requisition shall be binding, and thereupon the legislature of each state shall appoint the regimental officers, raise the men and clothe, arm and equip them in a soldierlike manner, at the expense of the United States; and the officers and men so clothed, armed and equipped shall march to the place appointed, and within the time agreed on by the United States in Congress assembled: but if the United States in Congress assembled shall, on consideration of circumstances judge proper that any state should not raise men, or should raise a smaller number than its quota, and that any other state should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, clothed, armed and equipped in the same manner as the quota of such state, unless the legislature of such state shall judge that such extra number can not be safely spared out of the same, in which case they shall raise, officer, clothe, arm and equip as many of such extra number as they judge can be safely spared. And the officers and men so clothed, armed and equipped, shall march to the place appointed, and within the time agreed on by the United States in Congress assembled.

The United States in Congress assembled shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defense and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war, to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander-in-chief of the army or navy, unless nine states assent to the same: nor shall a question on any other point, except for adjourning from day to day be determined, unless by the votes of a majority of the United States in Congress assembled.

The Congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months; and shall publish the journal of their proceedings monthly, except such parts thereof relating to treaties, alliances or military operations, as in their judgment require secrecy; and the yeas and nays of the delegates of each state on any question shall be entered on the journal, when it is desired by any delegate; and the delegates of a state, or any of them, at his or their request, shall be furnished with a transcript of the said journal, except such parts as are above excepted, to lay before the legislatures of the several states.

ARTICLE X. The Committee of the States, or any nine of them shall be authorized to execute, in the recess of Congress, such of the powers of Congress as the United States in Congress assembled, by the consent of nine states, shall from time to time think expedient to vest them with; provided that no power be delegated to the said committee, for the exercise of which, by the Articles of Confederation, the voice of nine states in the Congress of the United States assembled is requisite.

ARTICLE XI. Canada acceding to this Confederation, and joining in the measures of the United States, shall be admitted into, and entitled to all the advantages of this Union: but no other colony shall be admitted into the same, unless such admission be agreed to by nine states.

ARTICLE XII. All bills of credit emitted, moneys borrowed and debts contracted by, or under the authority of Congress, before the assembling of the United States, in pursuance of the present Confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States, and the public faith are hereby solemnly pledged.

ARTICLE XIII. Every state shall abide by the determinations of the United States in Congress assembled, on all questions which by this Confederation are submitted to them. And the Articles of this Confederation shall be inviolably observed by every state, and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them, unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the legislatures of every state.

AND WHEREAS it hath pleased the Great Governor of the world to incline the hearts of the legislatures we respectively represent in Congress, to approve of, and to authorize us to ratify the said Articles of Confederation and perpetual Union. Know ye that we the undersigned delegates, by virtue of the power and authority to us given for that purpose, do by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said Articles of Confederation and perpetual Union, and all and singular the matters and things therein contained: and we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the United States in Congress assembled, on all questions, which by the said Confederation are submitted to them. And that the articles thereof shall be inviolably observed by the states we respectively represent, and that the Union shall be perpetual.

IN WITNESS WHEREOF we have hereunto set our hands in Congress Done at Philadelphia in the State of Pennsylvania the ninth day of July in the year of our Lord one thousand seven hundred and seventy-eight, and in the third year of the independence of America.

JOSIAH BARTLETT	JOHN WENTWORTH, JUNR. August 8th, 1778	On the part and behalf of the State of New Hampshire.
JOHN HANCOCK SAMUEL ADAMS ELBRIDGE GERRY	FRANCIS DANA JAMES LOVELL SAMUEL HOLTON	On the part and behalf of the State of Massachusetts Bay.
WILLIAM ELLERY HENRY MARCHANT	JOHN COLLINS	On the part and behalf of the State of Rhode island and Providence Plantations.
ROGER SHERMAN SAMUEL HUNTINGTON OLIVER WOOLCOTT	TITUS HOSMER ANDREW ADAMS	On the part and behalf of the State of Connecticut.
JAS. DUANE FRA. LEWIS	WM. DUER GOUV. MORRIS	On the part and behalf of the State of New York.
JNO. WITHERSPOON	NATHL. SCUDDER	On the part and behalf of the State of New Jersey Novr. 26, 1778.
ROBT. MORRIS DANIEL ROBERDEAU JONA. BAYARD SMITH	WILLIAM CLINGAN JOSEPH REED 22d July, 1778	On the part and behalf of the State of Pennsylvania.
THO. M'KEAN Feby. 12, 1779	JOHN DICKINSON May 5th, 1779 NICHOLAS VAN DYKE	On the part and behalf of the State of Delaware.
JOHN HANSON March 1, 1781	DANIEL CARROLL Mar. 1, 1781	On the part and behalf of the State of Maryland.
RICHARD HENRY LEE JOHN BANISTER THOMAS ADAMS	JNO. HARVIE FRANCIS LIGHTFOOT LEE	On the part and behalf of the State of Virginia.
JOHN PENN July 21st, 1778	CORN. HARNETT JNO. WILLIAMS	On the part and behalf of the State of North Carolina.
HENRY LAURENS WILLIAM HENRY DRAYTON JNO. MATHEWS	RICHD. HUTSON THOS. HEYWARD JUNR.	On the part and behalf of the State of South Carolina.
JNO. WALTON 24th July, 1778	EDWD. TELFAIR EDWD. LANGWORTHY	On the part and behalf of the State of Georgia.

The Articles of Confederation were ratified by the States as follows:

South Carolina	Feb. 5, 1778	Massachusetts	Mar. 10, 1778
New York.....	Feb. 6, 1778	North Carolina	April 5, 1778
Rhode Island	Feb. 9, 1778	New Jersey	Nov. 19, 1778
Connecticut	Feb. 12, 1778	Virginia.....	Dec. 15, 1778
Georgia.....	Feb. 26, 1778	Delaware	Feb. 1, 1779
New Hampshire	Mar. 4, 1778	Maryland	Jan. 30, 1781
Pennsylvania	Mar. 5, 1778		

The ratification by all the States was formally announced to the public March 1, 1781.

Constitution of the
United States
1787

Constitution of the United States

(In Convention, September 17, 1787)

PREAMBLE

We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I. LEGISLATIVE DEPARTMENT*

Section 1. Congress*

*Powers Are Vested in Senate and House**

1.* All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2. House of Representatives

Election of Representatives

1. The House of Representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

Qualifications of Representatives

2. No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

* Headings and paragraph numbers have been inserted to assist the reader, and are not to be construed as a part of the Constitution. The original Constitution contains only article and section numbers. The modern style of capitalization has been used in the printing of this edition; and obsolete spelling of such words as "chuse" and "con-trol" has been changed to conform to the modern spelling prescribed by Webster's Dictionary. We have followed the text of the *UNITED STATES CONSTITUTION*, 1787 Bicentennial Edition 1987, prepared by the Commission on the Bicentennial of the United States Constitution.

Apportionment of Representatives

3. Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each state shall have at least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

This clause has been superseded, so far as it relates to representation, by Section 2 of the Fourteenth Amendment to the Constitution.

Vacancies

4. When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

Officers of the House—Impeachment

5. The House of Representatives shall choose their Speaker and other officers; and shall have the sole power of impeachment.

Section 3. The Senate

Number of Senators

1. The Senate of the United States shall be composed of two Senators from each state, chosen by the legislature thereof, for six years; and each Senator shall have one vote.

Superseded by Amendment XVII.

Classification of Senators

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

Modified by Amendment XVII.

Qualification of Senators

3. No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

President of Senate

4. The Vice President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

Officers of Senate

5. The Senate shall choose their other officers, and also a President pro Tempore, in the absence of the Vice President, or when he shall exercise the office of President of the United States.

Trial of Impeachment

6. The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: and no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment on Conviction of Impeachment

7. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

Section 4. Election of Senators and Representatives— Meetings of Congress

Election of Members of Congress

1. The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each state by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

See Amendment XX.

Congress to Meet Annually

2. The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Changed to January 3d by Amendment XX.

Section 5. Powers and Duties of Each House of Congress

Sole Judge of Qualifications of Members

1. Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each house may provide.

Rules of Proceedings—Punishment of Members

2. Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

Journals

3. Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.

Adjournment

4. Neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

Section 6. Compensation, Privileges and Disabilities, of Senators and Representatives

Compensation—Privileges

1. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the Treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

See also Amendment XXVII.

Disability to Hold Other Offices

2. No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office.

See also Section 3 of the Fourteenth Amendment.

Section 7. Mode of Passing Laws

SPECIAL PROVISIONS AS TO REVENUE LAWS

1. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

Laws, How Enacted

2. Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States: if he approve he shall sign it, but if not he shall return it, with his objections to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to

him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

Resolutions, Etc.

3. Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or, being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Section 8. Powers Granted to Congress

Taxation

1. The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States:

Loans

2. To borrow money on the credit of the United States:

Commerce

3. To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

Naturalization and Bankruptcies

4. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States:

Coin

5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures:

Counterfeiting

6. To provide for the punishment of counterfeiting the securities and current coin of the United States;

Post Office

7. To establish post offices and post roads:

Patents and Copyrights

8. To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

Courts

9. To constitute tribunals inferior to the Supreme Court:

Piracies

10. To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;

War

11. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

Army

12. To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

Navy

13. To provide and maintain a navy;

Military and Naval Rules

14. To make rules for the government and regulation of the land and naval forces;

Militia, Calling Forth

15. To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions;

Militia, Organizing and Arming

16. To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

Federal District and Other Places

17. To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places pur-

chased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards and other needful buildings:—And

Make Laws to Carry Out Foregoing Powers

18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

For other powers, see Article II, Section 1; Article III, Sections 2 and 3; Article IV, Sections 1–3; Article V; and Amendments XIII–XVI and XIX–XXI.

Section 9. Limitations on Powers Granted to the United States

Slave Trade

1. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

Habeas Corpus

2. The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

Ex Post Facto Law

3. No bill of attainder or ex post facto law shall be passed.

Direct Taxes

4. No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

Duties on Exports

5. No tax or duty shall be laid on articles exported from any state.

No Commercial Discrimination to Be Made Between States

6. No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another: nor shall vessels bound to, or from, one state, be obliged to enter, clear, or pay duties in another.

Money, How Drawn From Treasury

7. No money shall be drawn from the Treasury, but in consequence of appropriations made by law: and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

Titles of Nobility

8. No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any King, Prince, or foreign state.

For other limitations see Amendments I-X.

Section 10. Powers Prohibited to the States

Powers Prohibited, Absolutely

1. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

Powers Concerning Duties on Imports or Exports

2. No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws: and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the Treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

Powers Permitted With Consent of Congress

3. No state shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II. EXECUTIVE DEPARTMENT

Section 1. The President

Executive Power Vested in President—Term of Office

1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice President, chosen for the same term, be elected, as follows:

Appointment and Number of Presidential Electors

2. Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of Senators and

Representatives to which the state may be entitled in the Congress: but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

Mode of Electing President and Vice President

3. The electors shall meet in their respective states and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each: which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said house shall in like manner choose the President. But in choosing the President, the vote shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice President.

This paragraph has been superseded by the Twelfth Amendment to the Constitution.

See Amendment XX.

Time of Choosing Electors and Casting Electoral Vote

4. The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

Qualifications of President

5. No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

See also Fourteenth Amendment.

Presidential Succession

6. In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may by law provide for the case of removal, death, resignation or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

Note—*United States Code Annotated, Title 3, Sec. 19*, provides as follows:

§ 19. (a) (1) If, by reason of death, resignation, removal from office, inability, or failure to qualify, there is neither a President nor Vice President to discharge the powers and duties of the office of President, then the Speaker of the House of Representatives shall, upon his resignation as Speaker and as Representative in Congress, act as President.

(2) The same rule shall apply in the case of the death, resignation, removal from office, or inability of an individual acting as President under this subsection.

(b) If, at the time when under subsection (a) of this section a Speaker is to begin the discharge of the powers and duties of the office of President, there is no Speaker, or the Speaker fails to qualify as Acting President, then the President pro Tempore of the Senate shall, upon his resignation as President pro Tempore and as Senator, act as President.

(c) An individual acting as President under subsection (a) or subsection (b) of this section shall continue to act until the expiration of the then current Presidential term, except that—

(1) if his discharge of the powers and duties of the office is founded in whole or in part on the failure of both the President-elect and the Vice-President-elect to qualify, then he shall act only until a President or Vice President qualifies; and

(2) if his discharge of the powers and duties of the office is founded in whole or in part on the inability of the President or Vice President, then he shall act only until the removal of the disability of one of such individuals.

(d) (1) If, by reason of death, resignation, removal from office, inability, or failure to qualify, there is no President pro Tempore to act as President under subsection (b) of this section, then the officer of the United States who is highest on the following list, and who is not under disability to discharge the powers and duties of the office of President shall act as President: Secretary of State, Secretary of the Treasury, Secretary of Defense, Attorney General, Postmaster General, Secretary of the Interior, Secretary of Agriculture, Secretary of Commerce, Secretary of Labor, Secretary of Health, Education, and Welfare, Secretary of Housing and Urban Development.

(2) An individual acting as President under this subsection shall continue so to do until the expiration of the then current Presidential term, but not after a qualified and prior-entitled individual is able to act, except that the removal of the disability of an individual higher on the list contained in paragraph (1) of this subsection or the ability to qualify on the part of an individual higher on such list shall not terminate his service.

(3) The taking of the oath of office by an individual specified in the list in paragraph (1) of this subsection shall be held to constitute his resignation from the office by virtue of the holding of which he qualifies to act as President.

(e) Subsections (a), (b), and (d) of this section shall apply only to such officers as are eligible to the office of President under the Constitution. Subsection (d) of this section shall apply only to officers appointed, by and with the advice and consent of the Senate, prior to the time of the death, resignation, removal from office, inability, or failure to qualify, of the President pro Tempore, and only to officers not under impeachment by the House of Representatives at the time the powers and duties of the office of President devolve upon them.

(f) During the period that any individual acts as President under this section, his compensation shall be at the rate then provided by law in the case of the President.

Salary of President

7. The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Oath of Office of President

8. Before he enter on the execution of his office, he shall take the following oath or affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States."

Section 2. Powers of the President

Commander-in-Chief

1. The President shall be commander in chief of the Army and Navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

Treaties and Appointments

2. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

Filling Vacancies

3. The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

Section 3. Duties of the President

Message to Congress—Adjourn and Call Special Session

He shall from time to time give to the Congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

See also Article I, Section 5.

Section 4. Removal of Executive and Civil Officers

Impeachment of President and Other Officers

The President, Vice President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

See also Article I, Sections 2 and 3.

ARTICLE III. JUDICIAL DEPARTMENT

Section 1. Judicial Powers Vested in Federal Courts

Courts—Terms of Office and Salary of Judges

The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

Section 2. Jurisdiction of United States Courts

Cases That May Come Before United States Courts

1. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states, between a state and citizens of another state, between citizens of different states, between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

See also Eleventh Amendment.

Jurisdiction of Supreme and Appellate Courts

2. In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

Trial of Crimes

3. The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

See also Fifth, Sixth, Seventh, and Eighth Amendments.

Section 3. Treason

Treason—Definition and Conviction

1. Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

Punishment

2. The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.

ARTICLE IV. THE STATES AND THE FEDERAL GOVERNMENT

Section 1. Official Acts of the States

Full Faith and Credit

Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

See also Fourteenth Amendment.

Section 2. Citizens of the States

Interstate Privileges of Citizens

1. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

Fugitives From Justice

2. A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

Fugitives From Service

3. No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

“Person” here includes slave. This was the basis of the Fugitive Slave Laws of 1793 and 1850. It is now superseded by the Thirteenth Amendment, by which slavery is prohibited.

Section 3. New States

Admission or Division of States

1. New states may be admitted by the Congress into this union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as of the Congress.

Control of the Property and Territory of the Union

2. The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

Section 4. Protection of States Guaranteed

Republican Form of Government

The United States shall guarantee to every state in this union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

ARTICLE V. AMENDMENTS

Amendments, How Proposed and Adopted

The Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI. GENERAL PROVISIONS

The Public Debt

1. All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

See also Fourteenth Amendment, Section 4.

Supreme Law of the Land

2. This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the Constitution or laws of any state to the contrary notwithstanding.

Oath of Office—No Religious Test Required

3. The Senators and Representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII. RATIFICATION OF THE CONSTITUTION *

Ratification of Nine States Required

The ratification of the conventions of nine states, shall be sufficient for the establishment of this Constitution between the states so ratifying the same.

DONE in convention by the unanimous consent of the states present the seventeenth day of September in the year of our Lord one thousand seven hundred and eighty-seven and of the Independence of the United States of America the twelfth. In witness whereof we have hereunto subscribed our names.†

*The Constitution was ratified by the States in the following order:

1. Delaware—December 7, 1787.
2. Pennsylvania—December 12, 1787.
3. New Jersey—December 19, 1787.
4. Georgia—January 2, 1788.
5. Connecticut—January 9, 1788.
6. Massachusetts—February 6, 1788.
7. Maryland—April 28, 1788.
8. South Carolina—May 23, 1788.
9. New Hampshire—June 21, 1788.
10. Virginia—June 25, 1788.
11. New York—July 26, 1788.
12. North Carolina—November 21, 1789.
13. Rhode Island—May 29, 1790.

†The *Records of the Federal Convention*, as edited by Farrand, is the source for all of Warren's figures cited here. Farrand's work is highly respected, and has been referred to as "the basic document for the study of the Convention." (P. Bator et al, eds., *The Federal Courts and the Federal System*, 2nd ed., 1973, at p. 2.)

There were 74 delegates chosen to the convention: 19 did not attend; 16 declined or failed to sign; 39 signed.

G^o WASHINGTON—Presid^t
and deputy from Virginia

New Hampshire	{ JOHN LANGDON NICHOLAS GILMAN
Massachusetts	{ NATHANIEL GORHAM RUFUS KING
Connecticut	{ W ^M SAM ^L JOHNSON ROGER SHERMAN
New York : : :	ALEXANDER HAMILTON
New Jersey	{ WIL: LIVINGSTON DAVID BREARLEY. W ^M PATERSON. JONA: DAYTON
Pennsylvania	{ B FRANKLIN THOMAS MIFFLIN ROB ^T MORRIS GEO, CLYMER THO ^S FITZSIMONS JARED INGERSOLL JAMES WILSON GOUV MORRIS
Delaware	{ GEO: READ GUNNING BEDFORD jun JOHN DICKINSON RICHARD BASSETT JACO: BROOM
Maryland	{ JAMES M ^C HENRY DAN OF S ^T THO ^S JENIFER DAN ^L CARROLI.
Virginia	{ JOHN BLAIR— JAMES MADISON JR.
North Carolina	{ W ^M BLOUNT RICH ^D DOBBS SPAIGHT. HU WILLIAMSON
South Carolina	{ J. RUTLEDGE CHARLES COTESWORTH PINCKNEY CHARLES PINCKNEY PIERCE BUTLER
Georgia	{ WILLIAM FEW ABR BALDWIN

The word, "the," being interlined between the seventh and eighth lines of the first page, the word "thirty" being partly written on an erasure in the fifteenth line of the first page, the words "is tried" being interlined between the thirty-second and thirty-third lines of the first page and the word "the" being interlined between the forty-third and forty-fourth lines of the second page.

Attest WILLIAM JACKSON Secretary

Amendments

AMENDMENT I

Restrictions on Powers of Congress

[SECTION 1*.] Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Proposed September 25, 1789; ratified December 15, 1791.

AMENDMENT II

Right to Bear Arms

[SECTION 1.] A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

Proposed September 25, 1789; ratified December 15, 1791.

AMENDMENT III

Billeting of Soldiers

[SECTION 1.] No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

Proposed September 25, 1789; ratified December 15, 1791.

AMENDMENT IV

Seizures, Searches and Warrants

[SECTION 1.] The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Proposed September 25, 1789; ratified December 15, 1791.

*Words in brackets added.

AMENDMENT V**Criminal Proceedings and Condemnation of Property**

[SECTION 1.] No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb: nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law: nor shall private property be taken for public use without just compensation.

Proposed September 25, 1789; ratified December 15, 1791.

AMENDMENT VI**Mode of Trial in Criminal Proceedings**

[SECTION 1.] In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Proposed September 25, 1789; ratified December 15, 1791.

AMENDMENT VII**Trial by Jury**

[SECTION 1.] In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

Proposed September 25, 1789; ratified December 15, 1791.

AMENDMENT VIII**Bails—Fines—Punishments**

[SECTION 1.] Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Proposed September 25, 1789; ratified December 15, 1791.

AMENDMENT IX**Certain Rights Not Denied to the People**

[SECTION 1.] The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

Proposed September 25, 1789; ratified December 15, 1791.

AMENDMENT X**State Rights**

[SECTION 1.] The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

Proposed September 25, 1789; ratified December 15, 1791.

AMENDMENT XI**Judicial Powers**

[SECTION 1.] The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

Proposed March 4, 1794; ratified February 7, 1795; declared ratified January 8, 1798.

AMENDMENT XII**Election of President and Vice President**

[SECTION 1.] The electors shall meet in their respective states and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots, the person voted for as Vice President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate:—The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted:—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not ex-

ceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice President shall act as President, as in the case of the death or other constitutional disability of the President.

The person having the greatest number of votes as Vice President, shall be the Vice President, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice President of the United States.

Passed both Houses December 9, 1803; proposed (signed) December 12, 1803; declared ratified September 25, 1804.

AMENDMENT XIII

Slavery

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SECTION 2. Congress shall have power to enforce this article by appropriate legislation.

Proposed January 31, 1865; ratified December 6, 1865; certified December 18, 1865.

AMENDMENT XIV

Citizenship, Representation, and Payment of Public Debt

Citizenship

SECTION 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United

States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Apportionment of Representatives

SECTION 2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Disqualification for Public Office

SECTION 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each house, remove such disability.

Public Debt, Guarantee of

SECTION 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave: but all such debts, obligations and claims shall be held illegal and void.

Power of Congress

SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Proposed June 13, 1866; ratified July 9, 1868; certified July 28, 1868.

AMENDMENT XV**Elective Franchise***Right of Citizens to Vote*

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude.

Power of Congress

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

Proposed February 26, 1869; ratified February 3, 1870; certified March 30, 1870.

AMENDMENT XVI**Income Tax—Congress Given Power to Lay and Collect**

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration.

Proposed July 2, 1909; ratified February 3, 1913; certified February 25, 1913.

AMENDMENT XVII**Popular Election of Senators**

[SECTION 1.] The Senate of the United States shall be composed of two Senators from each state, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislatures.

[SECTION 2.] When vacancies happen in the representation of any state in the Senate, the executive authority of such state shall issue writs of election to fill such vacancies: *Provided*, That the legislature of any state may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

[SECTION 3.] This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

Proposed May 13, 1912; ratified April 8, 1913; certified May 31, 1913.

NOTE.—The Seventeenth Amendment was proposed as a direct amendment of Article I, Section 3, of the Constitution.

AMENDMENT XVIII**Prohibition—States Given Concurrent Power to Enforce**

SECTION 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

SECTION 2. The Congress and the several states shall have concurrent power to enforce this article by appropriate legislation.

SECTION 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several states, as provided in the Constitution, within seven years from the date of the submission hereof to the states by the Congress.

Proposed December 18, 1917; ratified January 16, 1919; certified January 29, 1919. Effective January 29, 1920. For repeal see Amendment XXI.

AMENDMENT XIX**Equal Suffrage**

[SECTION 1.] The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of sex.

[SECTION 2.] Congress shall have power to enforce this article by appropriate legislation.

Proposed June 4, 1919; ratified August 18, 1920; certified August 26, 1920.

AMENDMENT XX**Commencement of Congressional and Presidential Terms***End of Terms*

SECTION 1. The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

Assembling of Congress

SECTION 2. The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.

Congress Provides for Acting President

SECTION 3. If, at the time fixed for the beginning of the term of the President, the President-elect shall have died, the Vice President-elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President-elect shall have failed to qualify, then the Vice President-elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President-elect nor a Vice President-elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

Congress Has Power Over Unusual Elections

SECTION 4. The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

Date in Effect

SECTION 5. Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

Conditions of Ratification

SECTION 6. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several states within seven years from the date of its submission.

Proposed March 2, 1932; ratified January 23, 1933; certified February 6, 1933.

AMENDMENT XXI**Repeal of Prohibition***Repeal of 18th Amendment*

SECTION 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

Control of Interstate Liquor Transportation

SECTION 2. The transportation or importation into any state, territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

Condition of Ratification

SECTION 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several states, as provided in the Constitution, within seven years from the date of the submission hereof to the states by the Congress.

Proposed February 20, 1933; ratified December 5, 1933; certified December 5, 1933.

Ratified by the California State Convention on July 24, 1933.

AMENDMENT XXII**Terms of Office of the President***Limitation on Number of Terms*

SECTION 1. No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once.

But this article shall not apply to any person holding the office of President when this article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this article becomes operative from holding the office of President or acting as President during the remainder of such term.

Condition of Ratification

SECTION 2. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several states within seven years from the date of its submission to the states by the Congress.

Proposed March 24, 1947; ratified February 27, 1951; certified March 1, 1951 [16 Fed. Reg. 2019 (1951)].

AMENDMENT XXIII**District of Columbia**

SECTION 1. The district constituting the seat of government of the United States shall appoint in such manner as the Congress may direct:

A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the district would be entitled if it were a state, but in no event more than the least populous state: they shall be in addition to those appointed by the states, but they shall be considered, for the purposes of the election of President

and Vice President, to be electors appointed by a state; and they shall meet in the district and perform such duties as provided by the twelfth article of amendment.

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

Proposed June 16, 1960; ratified March 29, 1961; certified April 3, 1961.

AMENDMENT XXIV

Qualifications of Electors; Poll Tax

SECTION 1. The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any state by reason of failure to pay any poll tax or other tax.

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

Proposed September 14, 1962; ratified January 23, 1964; certified February 4, 1964.

AMENDMENT XXV

Succession to Presidency and Vice Presidency; Disability of President

SECTION 1. In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

SECTION 2. Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both houses of Congress.

SECTION 3. Whenever the President transmit to the President pro Tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

SECTION 4. Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro Tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President pro Tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro Tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.

Proposed July 6, 1965; certified February 23, 1967.

AMENDMENT XXVI

Voting Age—Eighteen

SECTION 1. The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any state on account of age.

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

Proposed March 23, 1971; ratified July 1, 1971; certified July 7, 1971.

AMENDMENT XXVII

Compensation of Members of Congress

No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened.

Proposed September 25, 1789; ratified May 7, 1992; certified May 18, 1992 [57 Fed. Reg. 21187 (1992)].

Ratified by the California State Legislature July 1, 1992.

Index to the Constitution of
the United States

Index to Constitution of the United States

	A	Art.	Amend.	Sec.
ADJOURNMENT OF CONGRESS		1	—	5(4)
AMENDMENTS TO CONSTITUTION. <i>See Constitution,</i>				
AMENDMENTS TO				
APPELLATE COURT				
jurisdiction of	3	—	2	
ARMS				
right to bear	—	II	—	
ARMY				
power of Congress—				
to make military rules	1	—	8(14)	
to raise and support	1	—	8(12)	
President is Commander-in-Chief	2	—	2(1)	
	B			
BAIL				
excessive, prohibited	—	VIII	—	
	C			
CHIEF JUSTICE				
presides, trial of impeachment of President	1	—	3(6)	
CITIZENS				
equal suffrage	—	XIX	—	
right to vote	—	XV	1	
—	—	XXVI	1	
CITIZENSHIP				
right to	—	XIV	1	
COIN				
power of Congress relative to	1	—	8(5)	
COMMERCE				
power of Congress relative to	1	—	8(3)	
CONGRESS				
acting President provided by	—	XX	3	
—	—	XXV	3,4	
adjournment of	1	—	5(4)	
amendments to Constitution, proposal by	5	—	—	
assembling of, dates for	—	XX	2	
control of property and territory of the Union	4	—	3(2)	
convening and adjournment of, by President	2	—	3	
grant of powers to	1	—	1	
House of Representatives—				
members of—				
apportionment of	1	—	2(3)	
—	—	XIV	2	
compensation, privileges, and disabilities	1	—	6(1)	
—	—	XXVII	—	
disability to hold other offices	1	—	6(2)	
disqualification of	—	XIV	3	
election of	1	—	2(1),4(1)	
qualifications of	1	—	2(2)	
vacancies, how filled	1	—	2(4)	
officers, impeachment of	1	—	2(5)	
powers and duties	1	—	5	
vacancies, how filled	1	—	2(4)	
Journals—				
each house shall keep	1	—	5(3)	
publication of	1	—	5(3)	

	<i>Art.</i>	<i>Amend.</i>	<i>Sec.</i>
CONGRESS—continued			
laws, mode of passing	1	—	7
limitation on powers of	1	—	9
make laws to carry out powers of	1	—	8(18)
meets annually	1	—	4(2)
	—	XX	2
Members of—			
apportionment of	1	—	2(3)
	—	XIV	2
compensation, privileges	1	—	6(1)
	—	XXVII	—
disability to hold other office	1	—	6(2)
disqualification of, for office	—	XIV	3
each house sole judge of qualification of own	1	—	5(1)
election of	1	—	2(1),4(1)
	—	XVII	—
punishment and expulsion of	1	—	5(2)
qualifications of	1	—	2(2),3(3)
terms of, commencement date	—	XX	1
vacancies, how filled	1	—	2(4),3(2)
	—	XVII	2
powers of—			
granted to	1	—	1,5,8,9
over unusual elections	—	XX	4
re state records	4	—	1
	—	IV	1
restrictions	—	I	—
to enforce articles—			
prohibiting slavery	—	XIII	—
re citizenship, representation, and payment of public debt	—	XIV	—
re equal suffrage	—	XIX	—
re prohibition	—	XVIII	—
re right to vote	—	XV	1
to levy and collect income tax	—	XVI	—
presidential electors, may determine time of choosing, and date they shall vote	2	—	1(4)
President's message to	2	—	3
punishment of members	1	—	5(2)
rules of proceedings, each house may determine	1	—	5(2)
Senate—			
advice and consent to treaties and appointments by President	2	—	2(2)
impeachment—			
judgment on conviction	1	—	3(7)
trial, Senate has sole power	1	—	3(6)
members of—			
compensation, privileges, and disabilities	1	—	6(1)
	—	XXVII	—
disability to hold other offices	1	—	6(1)
disqualification of	—	XIV	3
number of	1	—	3(1,2)
	—	XVII	—
popular election of	—	XVII	—
qualifications of	1	—	3(3)
vacancies, how filled	1	—	3(2)
	—	XVII	2
officers of	1	—	3(5)
President of	1	—	3(4)
sole judge of qualifications of members	1	—	5(1)

	<i>Art.</i>	<i>Amend.</i>	<i>Sec.</i>
CONSTITUTION			
adoption of amendments to.....	5	—	—
how amendments to, are proposed.....	5	—	—
ratification of.....	7	—	—
CONSTITUTION, AMENDMENTS TO			
arms, right to bear	—	II	—
bail, excessive, prohibited	—	VIII	—
citizens—			
equal suffrage	—	XIX	—
right to vote	—	XVI	—
—	—	XXVI	1
citizenship, right to	—	XIV	1
Congress—			
acting President provided by.....	—	XX	3
—	—	XXV	3,4
assembling of, dates for	—	XX	2
House of Representatives, disqualification of members	—	XIV	3
members of—			
apportionment of.....	—	XIV	2
disqualification of.....	—	XIV	3
terms, date of commencement for.....	—	XX	1
power of—			
over unusual elections.....	—	XX	4
to enforce article—			
prohibiting slavery	—	XIII	—
re citizenship, representation, and payment of public debt.....	—	XIV	—
re equal suffrage.....	—	XIX	—
re prohibition.....	—	XVIII	2
re right to vote	—	XV	2
—	—	XXVI	1
to levy and collect income tax	—	XVI	—
restriction on powers of	—	I	—
Senate, members of—			
disqualification of.....	—	XIV	3
popular election of	—	XVII	—
criminal procedure	—	V	—
criminal proceedings, mode of trial	—	VI	—
debt, public—			
guarantee of.....	—	XIV	4
payment of	—	XIV	4
declaration of Presidential ability	—	XXV	4
disqualification for public office	—	XIV	3
elections, power of Congress over unusual	—	XX	4
elective franchise.....	—	XV	—
fines, excessive, prohibited	—	VIII	—
income tax, power of Congress to levy and collect	—	XVI	—
judicial powers of United States, limitation on.....	—	XI	—
jury, trial by	—	VII	—
people, certain rights not denied to	—	IX	—
poll tax, qualifications of electors	—	XXIV	—
President—			
election of	—	XII	—
succession, disability of	—	XXV	1
succession to office of	—	XX	3
term of office	—	XX	1
presidential electors, District of Columbia	—	XXIII	—
presidential electors, mode of electing President and Vice President.....	—	XII	—

CONSTITUTION, AMENDMENTS TO—continued	Art.	Amend.	Sec.
prohibition—			
repeal of	—	XXI	—
States given power to enforce	—	XVIII	—
property, condemnation of	—	V	—
public debt. <i>See DEBT, PUBLIC</i>			
public office, disqualification for	—	XIV	3
punishments, excessive, prohibited	—	VIII	—
seizures, searches, and warrants	—	IV	—
slavery prohibited	—	XIII	—
soldiers, billeting of	—	III	—
States—			
apportionment of Representatives	—	XIV	2
control of interstate liquor transportation	—	XXI	2
enforce prohibition	—	XVIII	—
right to bear arms	—	II	—
rights reserved to	—	X	—
suffrage, equal	—	XIX	—
tax, income, power of Congress to levy and collect	—	XVI	—
Vice President—			
election of	—	XII	—
succession to office of President	—	XX	3
term of office, date of commencement	—	XX	1
vacancy in office of	—	XXV	2
vote—			
equal suffrage	—	XIX	—
right to	—	XV	1
—	—	XXVI	1
witnesses, criminal proceedings	—	VI	—
COUNTERFEITING			
power of Congress to provide for punishment for	1	—	8(6)
COURTS			
judicial powers of	3	—	1
jurisdiction of—			
Supreme and Appellate Courts	3	—	2(2)
United States Courts	3	—	2(1)
power of Congress to constitute certain	1	—	8(9)
terms of office and salary of judges	3	—	1
trial of crimes by	3	—	2(3)
CRIMES			
trial of	3	—	2(3)
CRIMINAL PROCEDURE	—	V	—
CRIMINAL PROCEEDINGS			
mode of trial in	—	VI	—
D			
DEBT, PUBLIC			
guarantee of	—	XIV	4
payment of	—	XIV	4
validation of	6	—	—
DISCRIMINATION BETWEEN STATES			
federal government shall give no preference	1	—	9(6)
DISQUALIFICATION FOR PUBLIC OFFICE	—	XIV	3
E			
ELECTIONS			
power of Congress over unusual	—	XX	4
ELECTIVE FRANCHISE	—	XV	—

EX POST FACTO LAW		<i>Art.</i>	<i>Amend.</i>	<i>Sec.</i>
limitation on Federal power to pass.....		1	—	9(3)
EXPORTS, DUTIES ON				
limitation on Federal power to lay.....		1	—	9(5)
F				
FEDERAL DISTRICT AND OTHER PLACES				
power of Congress to exercise legislation.....		1	—	8(17)
FINES				
excessive, prohibited.....		—	VIII	—
FUGITIVES FROM JUSTICE.....		4	—	2(2)
FUGITIVES FROM SERVICE.....		4	—	2(3)
G				
GOVERNMENT				
republican form of, guaranteed.....		4	—	4
H				
HABEAS CORPUS				
limitation on Federal powers		1	—	9(2)
HOUSE OF REPRESENTATIVES. <i>See</i> CONGRESS—House of Representatives				
I				
IMPEACHMENT OF OFFICERS				
House has sole power of		1	—	2(5)
judgment on conviction.....		1	—	3(7)
trial, Senate has sole power.....		1	—	3(6)
who may be impeached.....		2	—	4
INCOME TAX				
power of Congress to levy and collect.....		—	XVI	—
J				
JOURNALS				
each house shall keep.....		1	—	5(3)
publication of		1	—	5(3)
JUDGES				
terms of office and salary.....		3	—	1
—		—	XI	—
JUDGMENT				
conviction of impeachment.....		1	—	3(7)
JUDICIAL DEPARTMENT.....		3	—	1
—		—	XI	—
JUDICIAL POWER OF UNITED STATES.....		3	—	1
—		—	XI	—
JURY				
trial by		—	VII	—
L				
LAWS				
how enacted.....		1	—	7(2)
mode of passing by Congress		1	—	7
resolutions, etc.		1	—	7(3)
special provision as to revenue laws.....		1	—	7(1)
LEGISLATIVE DEPARTMENT		1	—	—
LIMITATIONS ON POWERS GRANTED TO THE UNITED STATES.....		1	—	9
LOANS				
power of Congress		1	—	8(2)

	M	Art.	Amend.	Sec.
MILITARY AND NAVAL RULES				
power of Congress to make.....		1	—	8(14)
MILITIA				
power of Congress—				
to call forth.....		1	—	8(15)
to provide for organizing and arming		1	—	8(16)
MONEY				
how drawn from Treasury.....		1	—	9(7)
	N			
NATURALIZATION AND BANKRUPTCIES				
power of Congress to establish uniform rule		1	—	8(4)
NAVY				
power of Congress—				
to make military and naval rules.....		1	—	8(14)
to raise and support.....		1	—	8(13)
President is Commander-in-Chief.....		2	—	2(1)
NOBILITY, TITLES OF				
federal government shall not grant		1	—	9(8)
	O			
OATH OF OFFICE				
no religious test required.....		6	—	—
	P			
PARDONS AND REPRIEVES				
power of President to grant.....		2	—	2(1)
PATENTS AND COPYRIGHTS				
power of Congress		1	—	8(8)
PEOPLE				
certain rights not denied to.....		—	IX	—
PIRACIES				
power of Congress to define and punish.....		1	—	8(10)
POLL TAX, PROHIBITED.....		—	XXIV	—
POST OFFICE				
power of Congress to establish		1	—	8(7)
POWERS GRANTED TO CONGRESS. <i>See</i> CONGRESS;				
CONSTITUTION, AMENDMENTS To				
POWERS GRANTED TO PRESIDENT. <i>See</i> PRESIDENT				
POWERS PROHIBITED TO THE STATES.....		1	—	10
PREAMBLE. <i>See page 35</i>				
PRESIDENT				
appointments, power to make		2	—	2(2)
Commander-in-Chief		2	—	2(1)
Congress—				
adjourn and call special session		2	—	3
message to.....		2	—	3
declaration of ability		—	XXV	3,4
duties of.....		2	—	3
election of.....		—	XII	—
executive power vested in		2	—	1(1)
impeachment of.....		2	—	4
mode of electing.....		2	—	1(3)
—		—	XII	—
—		—	XX	—
oath of office		2	—	1(8)
pardons and reprieves, power to grant		2	—	2(1)
powers of.....		2	—	2

	<i>Art.</i>	<i>Amend.</i>	<i>Sec.</i>
PRESIDENT—continued			
presidential electors—			
appointment and number of	2	—	1(2)
Congress may determine time of choosing, and day they shall vote	2	—	1(4)
mode of electing President.....	—	XII	—
qualifications of.....	2	—	1(5)
salary of	2	—	1(7)
succession to office	2	—	1(6)
—	—	XX	—
—	—	XXV	—
term of office—			
condition of ratification.....	—	XXII	2
date of commencement	—	XX	1
four years	2	—	1(1)
limitation of number of terms	—	XXII	1
treaties, power to make	2	—	2(2)
trial of impeachment, Chief Justice shall preside	1	—	3(6)
vacancies, power to fill.....	2	—	2(3)
vacancy in office of	—	XXV	1
PRESIDENTIAL ELECTORS			
appointment and number of	2	—	1(2)
Congress may determine time of choosing, and day they shall vote	2	—	1(4)
District of Columbia, number of.....	—	XIII	—
mode of electing President.....	—	XII	—
mode of electing Vice President.....	—	XII	—
PROHIBITION			
repeal of	—	XXI	—
States given power to enforce	—	XVIII	—
PROPERTY, CONDEMNATION OF.....	—	V	—
PUBLIC DEBT. <i>See</i> DEBT, PUBLIC			
PUBLIC OFFICE, DISQUALIFICATION FOR.....	—	XIV	3
PUNISHMENTS			
excessive, prohibited	—	VIII	—
R			
RATIFICATION OF THE CONSTITUTION	7	—	—
S			
SEAT OF GOVERNMENT.....	1	—	8(17)
SEIZURES, SEARCHES AND WARRANTS.....	—	IV	—
SENATE. <i>See</i> CONGRESS—Senate			
SLAVE TRADE			
limitation on federal powers	1	—	9(1)
prohibited	—	XIII	—
SOLDIERS			
billetting of	—	III	—
STATES			
admission of new	4	—	3(1)
appointment of Representatives in Congress	—	XIV	2
control of interstate liquor transportation upon repeal of prohibition.....	—	XXI	2
fugitives from justice	4	—	2(2)
fugitives from service.....	4	—	2(3)
interstate privileges of citizens.....	4	—	2(1)
no commercial discrimination to be made between	1	—	9(6)
powers prohibited to	1	—	10

	<i>Art.</i>	<i>Amend.</i>	<i>Sec.</i>
STATES—continued			
prohibition—			
enforcement of	—	XVIII	—
repeal of, control of liquor traffic in states or territories	—	XXI	2
republican form of government guaranteed.....	4	—	4
right to bear arms	—	II	—
rights reserved to.....	—	X	—
state records	4	—	1
—	—	IV	1
SUFFRAGE, EQUAL.....	—	XIX	—
SUPREME COURT			
judicial power of	3	—	1
jurisdiction of.....	3	—	2
SUPREME LAW OF THE LAND	6	—	2
T			
TAXATION			
powers of Congress.....	1	—	8(1)
TAXES			
direct, limitation on federal power to impose.....	1	—	9(4)
income, power of Congress to levy and collect	—	XVI	—
TREASON			
conviction of	3	—	3(1)
defined.....	3	—	3(1)
punishment for	3	—	3(2)
U			
UNION			
control of property and territory of.....	4	—	3(2)
V			
VICE PRESIDENT			
election of.....	—	XII	—
impeachment of.....	2	—	4
mode of electing.....	2	—	1(3)
—	—	XII	—
—	—	XX	—
succession to office of President.....	2	—	1(6)
—	—	XX	—
—	—	XXV	1
term of office—			
date for commencement of	—	XX	1
four years	2	—	1(1)
vacancy in office of	—	XXV	2
VOTE			
District of Columbia	—	XXIII	1
equal suffrage.....	—	XIX	—
right to.....	—	XV	1
—	—	XXVI	1
VOTING AGE—EIGHTEEN	—	XXVI	—
W			
WAR			
power of Congress to declare.....	1	—	8(11)
WEIGHTS AND MEASURES			
power of Congress to fix standard of	1	—	8(5)
WITNESSES			
criminal proceedings.....	—	VI	—

Treaty of Guadalupe Hidalgo

TREATY OF GUADALUPE HIDALGO*

TREATY OF PEACE, FRIENDSHIP, LIMITS, AND SETTLEMENT WITH THE REPUBLIC OF MEXICO[£]

In the name of Almighty God:

The United States of America and the United Mexican States, animated by a sincere desire to put an end to the calamities of the war which unhappily exists between the two republics, and to establish upon a solid basis relations of peace and friendship, which shall confer reciprocal benefits upon the citizens of both, and assure the concord, harmony, and mutual confidence wherein the two people should live, as good neighbors, have for that purpose appointed their respective plenipotentiaries—that is to say, the President of the United States has appointed Nicholas P. Trist, a citizen of the United States, and the President of the Mexican republic has appointed Don Luis Gonzaga Cuevas, Don Bernardo Couto, and Don Miguel Atristain, citizens of the said republic, who, after a reciprocal communication of their respective full powers, have, under the protection of Almighty God, the author of peace, arranged, agreed upon, and signed the following

Treaty of Peace, Friendship, Limits, and Settlement between the United States of America and the Mexican Republic.

ARTICLE I.

There shall be firm and universal peace between the United States of America and the Mexican republic, and between their respective countries, territories, cities, towns, and people, without exception of places or persons.

ARTICLE II.

Immediately upon the signature of this treaty, a convention shall be entered into between a commissioner or commissioners appointed by the General-in-chief of the forces of the United States, and such as may be appointed by the Mexican government, to the end that a provisional suspension of hostilities shall take place, and that, in the places occupied by the said forces, constitutional order may be reestablished, as regards the political, administrative, and judicial branches, so far as this shall be permitted by the circumstances of military occupation.

* Concluded at Guadalupe Hidalgo, February 2, 1848; The United States Senate, with amendments, advised and consented to the ratification March 10, 1848; With all signatories agreeing, the President ratified the Treaty, March 16, 1848; Ratifications exchanged at Queretaro, May 30, 1848; Proclaimed, July 4, 1848.

£ The text here printed is taken from Volume 3, West's Annotated California Codes, 1996, pg. 387.

ARTICLE III.

Immediately upon the ratification of the present treaty by the government of the United States, orders shall be transmitted to the commanders of their land and naval forces, requiring the latter (provided this treaty shall then have been ratified by the government of the Mexican republic, and the ratifications exchanged) immediately to desist from blockading any Mexican ports; and requiring the former (under the same condition) to commence, at the earliest moment practicable, withdrawing all troops of the United States then in the interior of the Mexican republic, to points that shall be selected by common agreement, at a distance from the seaports not exceeding thirty leagues; and such evacuation of the interior of the republic shall be completed with the least possible delay; the Mexican government hereby binding itself to afford every facility in its power for rendering the same convenient to the troops, on their march and in their new positions, and for promoting a good understanding between them and the inhabitants. In like manner orders shall be despatched to the persons in charge of the custom-houses at all ports occupied by the forces of the United States, requiring them (under the same condition) immediately to deliver possession of the same to the persons authorized by the Mexican government to receive it, together with all bonds and evidences of debt for duties on importations and on exportations, not yet fallen due. Moreover, a faithful and exact account shall be made out, showing the entire amount of all duties on imports and on exports, collected at such custom-houses, or elsewhere in Mexico, by authority of the United States, from and after the day of the ratification of this treaty by the government of the Mexican republic; and also an account of the cost of collection; and such entire amount, deducting only the cost of collection, shall be delivered to the Mexican government, at the city of Mexico, within three months after the exchange of ratifications.

The evacuation of the capital of the Mexican republic by the troops of the United States, in virtue of the above stipulation, shall be completed in one month after the orders there stipulated for shall have been received by the commander of said troops, or sooner if possible.

ARTICLE IV.

Immediately after the exchange of ratifications of the present treaty, all castles, forts, territories, places, and possessions, which have been taken or occupied by the forces of the United States during the present war, within the limits of the Mexican republic, as about to be established by the following article, shall be definitely restored to the said republic, together with all the artillery, arms, apparatus of war, munitions, and other public property, which were in the said castles and forts when captured, and which shall remain there at the time when this treaty shall be duly ratified

by the government of the Mexican republic. To this end, immediately upon the signature of this treaty, orders shall be despatched to the American officers commanding such castles and forts, securing against the removal or destruction of any such artillery, arms, apparatus of war, munitions, or other public property. The city of Mexico, within the inner line of intrenchments surrounding the said city, is comprehended in the above stipulations, as regards the restoration of artillery, apparatus of war, &c.

The final evacuation of the territory of the Mexican republic, by the forces of the United States, shall be completed in three months from the said exchange of ratifications, or sooner if possible: the Mexican government hereby engaging, as in the foregoing article, to use all means in its power for facilitating such evacuation, and rendering it convenient to the troops, and for promoting a good understanding between them and the inhabitants.

If, however, the ratification of this treaty by both parties should not take place in time to allow the embarkation of the troops of the United States to be completed before the commencement of the sickly season, at the Mexican ports on the Gulf of Mexico, in such case a friendly arrangement shall be entered into between the General-in-chief of the said troops and the Mexican government, whereby healthy and otherwise suitable places, at a distance from the ports not exceeding thirty leagues, shall be designated for the residence of such troops as may not yet have embarked, until the return of the healthy season. And the space of time here referred to as comprehending the sickly season, shall be understood to extend from the first day of May to the first day of November.

All prisoners of war taken on either side, on land or on sea, shall be restored as soon as practicable after the exchange of ratifications of this treaty. It is also agreed that if any Mexicans should now be held as captives by any savage tribe within the limits of the United States, as about to be established by the following article, the government of the said United States will exact the release of such captives, and cause them to be restored to their country.

ARTICLE V.

The boundary line between the two republics shall commence in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande, otherwise called Rio Bravo del Norte, or opposite the mouth of its deepest branch, if it should have more than one branch emptying directly into the sea: from thence up the middle of that river, following the deepest channel, where it has more than one, to the point where it strikes the southern boundary of New Mexico: thence, westwardly, along the whole southern boundary of New Mexico (which runs north of the town called *Paso*) to its western termination; thence, northward, along the western line of

New Mexico, until it intersects the first branch of the River Gila: (or if it should not intersect any branch of that river, then to the point on the said line nearest to such branch, and thence in a direct line to the same;) thence down the middle of the said branch and of the said river, until it empties into the Rio Colorado: thence across the Rio Colorado, following the division line between Upper and Lower California, to the Pacific Ocean.

The southern and western limits of New Mexico, mentioned in this article, are those laid down in the map entitled "*Map of the United Mexican States, as organized and defined by various acts of the Congress of said republic, and constructed according to the best authorities. Revised edition. Published at New York, in 1847, by J. Disturnell.*" Of which map a copy is added to this treaty, bearing the signatures and seals of the undersigned plenipotentiaries. And, in order to preclude all difficulty in tracing upon the ground the limit separating Upper from Lower California, it is agreed that the said limit shall consist of a straight line drawn from the middle of the Rio Gila, where it unites with the Colorado, to a point on the coast of the Pacific Ocean distant one marine league due south of the southernmost point of the port of San Diego, according to the plan of said port made in the year 1782 by Don Juan Pantoja, second sailing-master of the Spanish fleet, and published at Madrid in the year 1802, in the Atlas to the voyage of the schooners *Sutil* and *Mexicana*, of which plan a copy is hereunto added, signed and sealed by the respective plenipotentiaries.

In order to designate the boundary line with due precision, upon authoritative maps, and to establish upon the ground landmarks which shall show the limits of both republics, as described in the present article, the two governments shall each appoint a commissioner and a surveyor, who, before the expiration of one year from the date of the exchange of ratifications of this treaty, shall meet at the port of San Diego, and proceed to run and mark the said boundary in its whole course to the mouth of the Rio Bravo del Norte. They shall keep journals and make out plans of their operations; and the result agreed upon by them shall be deemed a part of this treaty, and shall have the same force as if it were inserted therein. The two governments will amicably agree regarding what may be necessary to these persons, and also as to their respective escorts, should such be necessary.

The boundary line established by this article shall be religiously respected by each of the two republics, and no change shall ever be made therein, except by the express and free consent of both nations, lawfully given by the general government of each, in conformity with its own constitution.

ARTICLE VI.

The vessels and citizens of the United States shall, in all time, have a free and uninterrupted passage by the Gulf of California, and by the River Colorado below its confluence with the Gila, to and from their possessions situated north of the boundary line defined in the preceding article; it being understood that this passage is to be by navigating the Gulf of California and the River Colorado, and not by land, without the express consent of the Mexican government.

If, by the examinations which may be made, it should be ascertained to be practicable and advantageous to construct a road, canal, or railway, which should in whole or in part run upon the River Gila, or upon its right or its left bank, within the space of one marine league from either margin of the river, the governments of both republics will form an agreement regarding its construction, in order that it may serve equally for the use and advantage of both countries.

ARTICLE VII.

The River Gila, and the part of the Rio Bravo del Norte lying below the southern boundary of New Mexico, being, agreeably to the fifth article, divided in the middle between the two republics, the navigation of the Gila and of the Bravo below said boundary shall be free and common to the vessels and citizens of both countries; and neither shall, without the consent of the other, construct any work that may impede or interrupt, in whole or in part, the exercise of this right; not even for the purpose of favoring new methods of navigation. Nor shall any tax or contribution, under any denomination or title, be levied upon vessels, or persons navigating the same, or upon merchandise or effects transported thereon, except in the case of landing upon one of their shores. If, for the purpose of making the said rivers navigable, or for maintaining them in such state, it should be necessary or advantageous to establish any tax or contribution, this shall not be done without the consent of both governments.

The stipulations contained in the present article shall not impair the territorial rights of either republic within its established limits.

ARTICLE VIII.

Mexicans now established in territories previously belonging to Mexico, and which remain for the future within the limits of the United States, as defined by the present treaty, shall be free to continue where they now reside, or to remove at any time to the Mexican republic, retaining the property which they possess in the said territories, or disposing thereof, and removing the proceeds wherever they please, without their being subjected, on this account, to any contribution, tax, or charge whatever.

Those who shall prefer to remain in the said territories, may either retain the title and rights of Mexican citizens, or acquire those of citizens of the United States. But they shall be under the obligation to make their election within one year from the date of the exchange of ratifications of this treaty; and those who shall remain in the said territories after the expiration of that year, without having declared their intention to retain the character of Mexicans, shall be considered to have elected to become citizens of the United States.

In the said territories, property of every kind, now belonging to Mexicans not established there, shall be inviolably respected. The present owners, the heirs of these, and all Mexicans who may hereafter acquire said property by contract, shall enjoy with respect to it guaranties equally ample as if the same belonged to citizens of the United States.

ARTICLE IX.

Mexicans who, in the territories aforesaid, shall not preserve the character of citizens of the Mexican republic, conformably with what is stipulated in the preceding article, shall be incorporated into the Union of the United States, and be admitted at the proper time (to be judged of by the Congress of the United States) to the enjoyment of all the rights of citizens of the United States, according to the principles of the constitution; and in the mean time shall be maintained and protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion without restriction.

ARTICLE X.

[Stricken out.]

ARTICLE XI.

Considering that a great part of the territories which, by the present treaty, are to be comprehended for the future within the limits of the United States, is now occupied by savage tribes, who will hereafter be under the exclusive control of the government of the United States, and whose incursions within the territory of Mexico would be prejudicial in the extreme, it is solemnly agreed that all such incursions shall be forcibly restrained by the government of the United States whensoever this may be necessary; and that when they cannot be prevented, they shall be punished by the said government, and satisfaction for the same shall be exacted—all in the same way, and with equal diligence and energy, as if the same incursions were mediated or committed within its own territory, against its own citizens.

It shall not be lawful, under any pretext whatever, for any inhabitant of the United States to purchase or acquire any Mexican, or any foreigner residing in Mexico, who may have been captured by Indians inhabiting the

territory of either of the two republics, nor to purchase or acquire horses, mules, cattle, or property of any kind, stolen within Mexican territory by such Indians.

And in the event of any person or persons, captured within Mexican territory by Indians, being carried into the territory of the United States, the government of the latter engages and binds itself, in the most solemn manner, so soon as it shall know of such captives being within its territory, and shall be able so to do, through the faithful exercise of its influence and power, to rescue them and return them to their country, or deliver them to the agent or representative of the Mexican government. The Mexican authorities will, as far as practicable, give to the government of the United States notice of such captures; and its agent shall pay the expenses incurred in the maintenance and transmission of the rescued captives: who, in the mean time, shall be treated with the utmost hospitality by the American authorities at the place where they may be. But if the government of the United States, before receiving such notice from Mexico, should obtain intelligence, through any other channel, of the existence of Mexican captives within its territory, it will proceed forthwith to effect their release and delivery to the Mexican agent, as above stipulated.

For the purpose of giving to these stipulations the fullest possible efficacy, thereby affording the security and redress demanded by their true spirit and intent, the government of the United States will now and hereafter pass, without unnecessary delay, and always vigilantly enforce, such laws as the nature of the subject may require. And finally, the sacredness of this obligation shall never be lost sight of by the said government when providing for the removal of the Indians from any portion of the said territories, or for its being settled by citizens of the United States; but on the contrary, special care shall then be taken not to place its Indian occupants under the necessity of seeking new homes, by committing those invasions which the United States have solemnly obliged themselves to restrain.

ARTICLE XII.

In consideration of the extension acquired by the boundaries of the United States, as defined in the fifth article of the present treaty, the government of the United States engages to pay to that of the Mexican republic the sum of fifteen millions of dollars.

Immediately after this treaty shall have been duly ratified by the government of the Mexican republic, the sum of three millions of dollars shall be paid to the said government by that of the United States, at the city of Mexico, in the gold or silver coin of Mexico. The remaining twelve millions of dollars shall be paid at the same place, and in the same coin, in annual instalments of three millions of dollars each, together with interest

on the same at the rate of six per centum per annum. This interest shall begin to run upon the whole sum of twelve millions from the day of the ratification of the present treaty by the Mexican government, and the first of the instalments shall be paid at the expiration of one year from the same day. Together with each annual instalment, as it falls due, the whole interest accruing on such instalment from the beginning shall also be paid.

ARTICLE XIII.

The United States engage, moreover, to assume and pay to the claimants all the amounts now due them, and those hereafter to become due, by reason of the claims already liquidated and decided against the Mexican republic, under the conventions between the two republics severally concluded on the eleventh day of April, eighteen hundred and thirty-nine, and on the thirtieth day of January, eighteen hundred and forty-three; so that the Mexican republic shall be absolutely exempt, for the future, from all expense whatever on account of the said claims.

ARTICLE XIV.

The United States do furthermore discharge the Mexican republic from all claims of citizens of the United States, not heretofore decided against the Mexican government, which may have arisen previously to the date of the signature of this treaty; which discharge shall be final and perpetual, whether the said claims be rejected or be allowed by the board of commissioners provided for in the following article, and whatever shall be the total amount of those allowed.

ARTICLE XV.

The United States, exonerating Mexico from all demands on account of the claims of their citizens mentioned in the preceding article, and considering them entirely and forever cancelled, whatever their amount may be, undertake to make satisfaction for the same, to an amount not exceeding three and one quarter millions of dollars. To ascertain the validity and amount of those claims, a board of commissioners shall be established by the government of the United States, whose awards shall be final and conclusive: provided, that in deciding upon the validity of each claim, the board shall be guided and governed by the principles and rules of decision prescribed by the first and fifth articles of the unratified convention, concluded at the city of Mexico on the twentieth day of November, one thousand eight hundred and forty-three;* and in no case shall an award be made in favor of any claim not embraced by these principles and rules.

If, in the opinion of the said board of commissioners, or of the claimants, any books, records, or documents in the possession or power of the government of the Mexican republic, shall be deemed necessary to the just decision of any claim, the commissioners, or the claimants through them,

shall, within such period as Congress may designate, make an application in writing for the same, addressed to the Mexican Minister for Foreign Affairs, to be transmitted by the Secretary of State of the United States; and the Mexican government engages, at the earliest possible moment after the receipt of such demand, to cause any of the books, records, or documents, so specified, which shall be in their possession or power, (or authenticated copies or extracts of the same,) to be transmitted to the said Secretary of State, who shall immediately deliver them over to the said board of commissioners: *Provided*, That no such application shall be made by, or at the instance of, any claimant, until the facts which it is expected to prove by such books, records, or documents, shall have been stated under oath or affirmation.

* *First and Fifth Articles of the unratified Convention between the United States and the Mexican Republic of the 20th November, 1843.*

ARTICLE I.

All claims of citizens of the Mexican republic against the government of the United States, which shall be presented in the manner and time hereinafter expressed, and all claims of citizens of the United States against the government of the Mexican republic, which, for whatever cause, were not submitted to, nor considered, nor finally decided by, the commission, nor by the arbiter appointed by the convention of 1839, and which shall be presented in the manner and time hereinafter specified, shall be referred to four commissioners, who shall form a board, and shall be appointed in the following manner, that is to say: Two commissioners shall be appointed by the President of the Mexican republic, and the other two by the President of the United States, with the approbation and consent of the Senate. The said commissioners, thus appointed, shall, in the presence of each other, take an oath to examine and decide impartially the claims submitted to them, and which may lawfully be considered, according to the proofs which shall be presented, the principles of right and justice, the law of nations, and the treaties between the two republics.

ARTICLE V.

All claims of citizens of the United States against the government of the Mexican republic, which were considered by the commissioners, and referred to the umpire appointed under the convention of the eleventh April, 1839, and which were not decided by him, shall be referred to, and decided by, the umpire to be appointed, as provided by this convention, on the points submitted to the umpire under the late convention, and his decision shall be final and conclusive. It is also agreed, that if the respective commissioners shall deem it expedient, they may submit to the said arbiter new arguments upon the said claims.

ARTICLE XVI.

Each of the contracting parties reserves to itself the entire right to fortify whatever point within its territory it may judge proper so to fortify, for its security.

ARTICLE XVII.

The treaty of amity, commerce, and navigation, concluded at the city of Mexico on the fifth day of April, A.D. 1831, between the United States of America and the United Mexican States, except the additional article, and except so far as the stipulations of the said treaty may be incompatible with any stipulation contained in the present treaty, is hereby revived for the period of eight years from the day of the exchange of ratifications of this treaty, with the same force and virtue as if incorporated therein; it be-

ing understood that each of the contracting parties reserves to itself the right, at any time after the said period of eight years shall have expired, to terminate the same by giving one year's notice of such intention to the other party.

ARTICLE XVIII.

All supplies whatever for troops of the United States in Mexico, arriving at ports in the occupation of such troops previous to the final evacuation thereof, although subsequently to the restoration of the custom-houses at such ports, shall be entirely exempt from duties and charges of any kind; the government of the United States hereby engaging and pledging its faith to establish, and vigilantly to enforce, all possible guards for securing the revenue of Mexico, by preventing the importation, under cover of this stipulation, of any articles other than such, both in kind and in quantity, as shall really be wanted for the use and consumption of the forces of the United States during the time they may remain in Mexico. To this end, it shall be the duty of all officers and agents of the United States to denounce to the Mexican authorities at the respective ports any attempts at a fraudulent abuse of this stipulation which they may know of or may have reason to suspect, and to give to such authorities all the aid in their power with regard thereto; and every such attempt, when duly proved and established by sentence of a competent tribunal, shall be punished by the confiscation of the property so attempted to be fraudulently introduced.

ARTICLE XIX.

With respect to all merchandise, effects, and property whatsoever, imported into ports of Mexico whilst in the occupation of the forces of the United States, whether by citizens of either republic, or by citizens or subjects of any neutral nation, the following rules shall be observed:—

1. All such merchandise, effects, and property, if imported previously to the restoration of the custom-houses to the Mexican authorities, as stipulated for in the third article of this treaty, shall be exempt from confiscation, although the importation of the same be prohibited by the Mexican tariff.

2. The same perfect exemption shall be enjoyed by all such merchandise, effects, and property, imported subsequently to the restoration of the custom-houses, and previously to the sixty days fixed in the following article for the coming into force of the Mexican tariff at such ports respectively; the said merchandise, effects, and property being, however, at the time of their importation, subject to the payment of duties, as provided for in the said following article.

3. All merchandise, effects, and property described in the two rules foregoing shall, during their continuance at the place of importation, and upon their leaving such place for the interior, be exempt from all duty, tax, or impost of every kind, under whatsoever title or denomination. Nor shall they be there subjected to any charge whatsoever upon the sale thereof.

4. All merchandise, effects, and property, described in the first and second rules, which shall have been removed to any place in the interior whilst such place was in the occupation of the forces of the United States, shall, during their continuance therein, be exempt from all tax upon the sale or consumption thereof, and from every kind of impost or contribution, under whatsoever title or denomination.

5. But if any merchandise, effects, or property, described in the first and second rules, shall be removed to any place not occupied at the time by the forces of the United States, they shall, upon their introduction into such place, or upon their sale or consumption there, be subject to the same duties which, under the Mexican laws, they would be required to pay in such cases if they had been imported in time of peace, through the maritime custom-houses, and had there paid the duties conformably with the Mexican tariff.

6. The owners of all merchandise, effects, or property described in the first and second rules, and existing in any port of Mexico, shall have the right to reship the same, exempt from all tax, impost, or contribution whatever.

With respect to the metals, or other property, exported from any Mexican port whilst in the occupation of the forces of the United States, and previously to the restoration of the custom-house at such port, no person shall be required by the Mexican authorities, whether general or state, to pay any tax, duty, or contribution upon any such exportation, or in any manner to account for the same to the said authorities.

ARTICLE XX.

Through consideration for the interests of commerce generally, it is agreed, that if less than sixty days should elapse between the date of the signature of this treaty and the restoration of the custom-houses, conformably with the stipulation in the third article, in such case all merchandise, effects, and property whatsoever, arriving at the Mexican ports after the restoration of the said custom-houses, and previously to the expiration of sixty days after the day of the signature of this treaty, shall be admitted to entry; and no other duties shall be levied thereon than the duties established by the tariff found in force at such custom-houses at the time of the restoration of the same. And to all such merchandise, effects, and property, the rules established by the preceding article shall apply.

ARTICLE XXI.

If unhappily any disagreement should hereafter arise between the governments of the two republics, whether with respect to the interpretation of any stipulation in this treaty, or with respect to any other particular concerning the political or commercial relations of the two nations, the said governments, in the name of those nations, do promise to each other that they will endeavor, in the most sincere and earnest manner, to settle the differences so arising, and to preserve the state of peace and friendship in which the two countries are now placing themselves; using, for this end, mutual representations and pacific negotiations. And if, by these means, they should not be enabled to come to an agreement, a resort shall not, on this account, be had to reprisals, aggression, or hostility of any kind, by the one republic against the other, until the government of that which deems itself aggrieved shall have maturely considered, in the spirit of peace and good neighborship, whether it would not be better that such difference should be settled by the arbitration of commissioners appointed on each side, or by that of a friendly nation. And should such course be proposed by either party, it shall be acceded to by the other, unless deemed by it altogether incompatible with the nature of the difference, or the circumstances of the case.

ARTICLE XXII.

If (which is not to be expected, and which God forbid!) war should unhappily break out between the two republics, they do now, with a view to such calamity, solemnly pledge themselves to each other and to the world, to observe the following rules: absolutely where the nature of the subject permits, and as closely as possible in all cases where such absolute observance shall be impossible:—

1. The merchants of either republic then residing in the other shall be allowed to remain twelve months, (for those dwelling in the interior,) and six months (for those dwelling at the seaports,) to collect their debts and settle their affairs: during which periods, they shall enjoy the same protection, and be on the same footing, in all respects, as the citizens or subjects of the most friendly nations; and, at the expiration thereof, or at any time before, they shall have full liberty to depart, carrying off all their effects without molestation or hinderance, conforming therein to the same laws which the citizens or subjects of the most friendly nations are required to conform to. Upon the entrance of the armies of either nation into the territories of the other, women and children, ecclesiastics, scholars of every faculty, cultivators of the earth, merchants, artisans, manufacturers, and fishermen, unarmed and inhabiting unfortified towns, villages, or places, and in general all persons whose occupations are for the common subsistence and benefit of mankind, shall be allowed to continue their respective

employments unmolested in their persons. Nor shall their houses or goods be burnt or otherwise destroyed, nor their cattle taken, nor their fields wasted, by the armed force into whose power, by the events of war, they may happen to fall; but if the necessity arise to take any thing from them for the use of such armed force, the same shall be paid for at an equitable price. All churches, hospitals, schools, colleges, libraries, and other establishments for charitable and beneficent purposes, shall be respected, and all persons connected with the same protected in the discharge of their duties, and the pursuit of their vocations.

2. In order that the fate of prisoners of war may be alleviated, all such practices as those of sending them into distant inclement or unwholesome districts, or crowding them into close and noxious places, shall be studiously avoided. They shall not be confined in dungeons, prison-ships, or prisons; nor be put in irons, or bound, or otherwise restrained in the use of their limbs. The officers shall enjoy liberty on their paroles, within convenient districts, and have comfortable quarters; and the common soldier shall be disposed in cantonments, open and extensive enough for air and exercise, and lodged in barracks as roomy and good as are provided by the party in whose power they are for its own troops. But if any officer shall break his parole by leaving the district so assigned him, or any other prisoner shall escape from the limits of his cantonment, after they shall have been designated to him, such individual, officer, or other prisoner, shall forfeit so much of the benefit of this article as provides for his liberty on parole or in cantonment. And if any officer so breaking his parole, or any common soldier so escaping from the limits assigned him, shall afterwards be found in arms, previously to his being regularly exchanged, the person so offending shall be dealt with according to the established laws of war. The officers shall be daily furnished by the party in whose power they are, with as many rations, and of the same articles, as are allowed, either in kind or by commutation, to officers of equal rank in its own army; and all others shall be daily furnished with such ration as is allowed to a common soldier in its own service: the value of all which supplies shall, at the close of the war, or at periods to be agreed upon between the respective commanders, be paid by the other party, on a mutual adjustment of accounts for the subsistence of prisoners; and such accounts shall not be mingled with or set off against any others, nor the balance due on them be withheld, as a compensation or reprisal for any cause whatever, real or pretended. Each party shall be allowed to keep a commissary of prisoners, appointed by itself, with every cantonment of prisoners, in possession of the other; which commissary shall see the prisoners as often as he pleases; shall be allowed to receive, exempt from all duties or taxes, and to distribute, whatever comforts may be sent to them by their friends; and shall be free to transmit his reports in open letters to the party by whom he is employed.

And it is declared that neither the pretence that war dissolves all treaties, nor any other whatever, shall be considered as annulling or suspending the solemn covenant contained in this article. On the contrary, the state of war is precisely that for which it is provided; and during which, its stipulations are to be as sacredly observed as the most acknowledged obligations under the law of nature or nations.

ARTICLE XXIII.

This treaty shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof; by the President of the Mexican republic, with the previous approbation of its General Congress; and the ratifications shall be exchanged in the city of Washington, or at the seat of government of Mexico, in four months from the date of the signature hereof, or sooner if practicable.

In faith whereof, we, the respective plenipotentiaries, have signed this treaty of peace, friendship, limits, and settlement; and have hereunto affixed our seals respectively. Done in quintuplicate, at the city of Guadalupe Hidalgo, on the second day of February, in the year of our Lord one thousand eight hundred and forty-eight.

N.P. Trist, [L.S.]

Luis G. Cuevas, [L.S.]

Bernardo Couto, [L.S.]

Migl. Atristain, [L.S.]

Act for the Admission of California
Into the Union
1850

Act for the Admission of California Into the Union *

Whereas, the people of California have presented a constitution and asked admission into the Union, which constitution was submitted to Congress by the President of the United States, by message dated February thirteenth, eighteen hundred and fifty, and which, on due examination, is found to be republican in its form of government:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the State of California shall be one, and is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original States in all respects whatever.

SEC. 2. *And be it further enacted,* That until the representatives in Congress shall be apportioned according to an actual enumeration of the inhabitants of the United States, the State of California shall be entitled to two representatives in Congress.

SEC. 3. *And be it further enacted,* That the said State of California is admitted into the Union upon the express condition that the people of said State, through their legislature or otherwise, shall never interfere with the primary disposal of the public lands within its limits, and shall pass no law and do no act whereby the title of the United States to, and right to dispose of, the same shall be impaired or questioned; and that they shall never lay any tax or assessment of any description whatsoever upon the public domain of the United States, and in no case shall non-resident proprietors, who are citizens of the United States, be taxed higher than residents; and that all the navigable waters within the said State shall be common highways, and forever free, as well to the inhabitants of said State as to the citizens of the United States, without any tax, impost, or duty therefor. *Provided,* That nothing herein contained shall be construed as recognizing or rejecting the propositions tendered by the people of California as articles of compact in the ordinance adopted by the convention which formed the constitution of that State.

Approved, September 9, 1850. †

*The text here printed is taken from Volume 9, Statutes at Large, page 452.

†The following provision appears in an act approved September 28, 1850, Volume 9, Statutes at Large, page 521:

"That all the laws of the United States which are not locally inapplicable shall have the same force and effect within the said State of California as elsewhere within the United States."

Constitutional History
of California

Constitutional History of California

By PAUL MASON

GOVERNMENT DURING THE SPANISH PERIOD Spanish Plan of Government

Earliest Government of California

Beginning with the first Spanish settlement in California in 1769 the government was divided between the Padres who exercised an ecclesiastical control of the missions, and commandantes who exercised military control over the soldiers and presidios and generally over crimes.

With the establishment of pueblos a short time later, a civil government was established which consisted merely of a Governor, but for a long period of time it was of no practical importance.

The independence of Mexico was secured from Spain in 1821.

In 1837 a new constitution was drawn up by which the government of the provinces was substantially altered and the missions were confiscated.

Government of California in 1846¹

At the time of the occupation of California by the Americans the province was governed by the laws of March 20 and May 23, 1837, which provided for a government divided into executive, legislative and judicial departments. The division was not as carefully followed as in our state and national governments, but was more closely followed than in our county governments. The government was also decidedly more centralized than our own.

The Executive Department

The Executive Department of the Government consisted of a Governor appointed by the Government of Mexico, prefects appointed by the Governor and approved by the Federal Government of Mexico, and subprefects appointed by the prefects and approved by the Governor. Both prefects and subprefects were responsible to the Governor for the administration of the government in their local districts.

The position of prefect, or subprefect, is more comparable to our sheriffs than to any other of our officers.

The Governor, through the prefects, subprefects and town councils (ayuntamientos), where they existed, was responsible for the public order of the department, the disposal of the armed force assigned to him for police purposes, and was authorized when necessary to require the service of troops from the commandante. It was his duty to publish and execute the

¹ Browne Debates, Translation of Mexican Laws, XXIV, XLIV; 1 Cal. 559, 587.

laws of the department and of the general government, to remit to the government all acts of the Departmental Legislature, to watch over the revenues and the public health of the department, to take care that there was no want of elementary schools, to see that the school teachers possessed good moral character and the necessary qualifications, and to send vagabonds and idle persons to work shops or agricultural establishments.

The Governor also had power to issue search warrants, to appoint officers for a term not to exceed three years, to suspend the town councils with the consent of the Legislature, to decide disputes concerning local elections, to preside over the Departmental Legislature and to vote in case of a tie, and to preside over public meetings.

The law provided for a secretary whose duties correspond closely with the duties of the secretaries of state in our own states, and who was also to act as a private secretary to the Governor.

The Legislative Department

The Departmental Legislature consisted of seven members who were elected every four years. The duties of the Legislature were to pass laws relating to taxes, public education, industry, trade and municipal administrations; to establish schools in all of the towns of the department; and to collect and assign funds to the schools; to order the establishment and repair of the roads; to make regulations for the improvement of public education, and the improvement of agricultural industries and commerce; to audit municipal financial reports, and to advise with the Governor when he should require it. The Legislature was prohibited from imposing illegal or unauthorized contributions; from raising armies except when ordered by the general government and from exercising authority other than that granted by the laws of Mexico.

The Judicial Department

The Judicial Department as provided by the laws of March 20 and May 23, 1837, called for Supreme (Superior) Court, courts of second instance, courts of first instance, and courts of alcaldes and justices of the peace. The Supreme Court (Tribunal Superior) was to consist of four Justices (Ministros) and an Attorney General (Fiscal). The courts of second instance (segunda instancia) were constituted by the Judges of the Supreme Court sitting separately. The Supreme Court and courts of second instance were courts of appellate jurisdiction.² The courts of first instance (primeria instancia) were the district courts of original jurisdiction. The judges of courts of first instance were appointed by the Governor upon the

² 1 California Reports, 575.

recommendation of the Supreme Court. The alcaldes were municipal officers who exercised judicial functions, and the courts of the justices of the peace (*jueces depaz*) were local courts having jurisdiction of cases involving the less important matters.

By a decree of March 2, 1843, alcaldes and justices of the peace of California were empowered to perform the functions of judges of first instance in those districts in which there were no judges of courts of first instance.³

The Departmental Legislature and the Governor were especially enjoined to provide for the appointment of a sufficient number of justices of the peace so that there should be one in "every ward and populous ranchería distant from a town." The justices of the peace were to be appointed by the prefects upon the recommendation of the subprefects.

The justices of the peace were granted the same authority that had been previously exercised by the alcaldes which they were to replace everywhere in California except in the capital city.⁴ The town councils in which the alcalde was the chief officer continued to exist, however, in most of the towns, until the organization of the state government by the Americans.

The judicial system provided for the provinces of Mexico corresponds very closely with the present judicial system of California; the tribunal and courts of *segunda instancia* correspond with our Supreme and appellate courts; the courts of *primeria instancia*, with our superior courts; the alcaldes courts, with our municipal courts and the justices' courts with our own justices' courts. The judicial system adopted by the first constitution was the system already established in California under the laws of Mexico.

Judicial Procedure

The judicial procedure was, except in two particulars, very similar to our own. In civil disputes before the case could go to the regular courts a hearing was required before a justice of the peace or alcalde for the purpose of attempting to effect a reconciliation. A special type of proceeding was also provided for civil cases in which the amount involved did not exceed \$100 and for criminal cases respecting trifling injuries. In these cases formal procedure was dispensed with and all pleadings were oral. The procedure in these cases was very similar to that in our small claims courts. It appears that small cases were rarely tried by the aid of attorneys, but instead each party brought a friend to assist him.

Local Administration of Justice

The alcaldes and justices of the peace were responsible for the good order and public tranquility of the place of their residence and were required

³ Mena vs. LeRoy, 1 California Reports, 220.

⁴ 1 California Reports, 575.

to watch over the execution of the police regulations and laws and for the purpose of maintaining order they were authorized to ask for assistance from the military commandante. They were required to bring any person arrested by them before a judge within three days, and to reprimand the idle, vagabonds, persons of bad character or conduct, and those of no known occupation. They were authorized on their own authority to levy and collect fines to the amount of \$25 (which were paid into the municipal treasury) and to impose sentences of not to exceed four days at hard labor or eight days confinement in prison.

Municipal Government

The capital of the department and certain other towns were authorized to establish town councils (*ayuntamientos*) and the town councils were to consist of not more than six magistrates (*alcaldes*), 12 councilmen (*regidores*) and two clerks (*síndicas*). Monterey, the capital of the province, was the only city in California which was by the laws of 1837 entitled to a town council.⁵

The *alcalde* was the principal municipal officer and performed the duties ordinarily performed in our own cities by the mayor, and in the absence of justices of the peace or judges of first instance, he performed the duties of these offices.

The duties of the town councils were to take care of the streets, public places, and public squares, to provide burial grounds, to watch over the quality of food and drugs, to provide supplies of water, to take charge of prisons and hospitals, and in case of epidemics to organize and establish health committees. They were to keep records of births, marriages, etc., and to endeavor as far as possible to have the streets straight, paved and lighted; to provide for the construction and repair of bridges and to license amusements. The town councils were given power to make and enforce local police regulations and were required to pay careful attention to the establishment of schools.

General Riley's Summary of the Government

General Riley in his proclamation of June 3, 1849, calling the constitutional convention, described the government of California, as he believed it should be organized under the Mexican law, as follows:

"It consists first of a Governor, appointed by the Supreme Government; in default of such appointment the office is temporarily vested in the commanding officer of the Department. The powers and duties of the Governor are of a limited character, and fully defined and pointed out by the laws. Second, a secretary, whose duties and powers are also properly defined. Third, a territorial or Departmental Legislature, with

⁵ 1 California Reports, 574.

limited powers to pass laws of a local character. Fourth, a Superior Court (Tribunal Superior) of the Territory, consisting of four judges and a Fiscal. Fifth, a Prefect and Sub-Prefect for each district, who are charged with the preservation of public order and the execution of the laws; their duties correspond in a great measure with those of District Marshals and Sheriffs. Sixth, a Judge of First Instance for each district. This office is by a custom not inconsistent with the laws, vested in the First Alcalde of the District. Seventh, Alcaldes who have concurrent jurisdiction among themselves in the same district are subordinate to the higher judicial tribunals. Eighth, Local Justices of the Peace. Ninth, Ayuntamientos or Town Councils. The powers and functions of all these officers are fully defined in the laws of this country, and are almost identical with those of the corresponding officers in the Atlantic and Western States."

The Actual Government

The Alcalde System

The actual government, however, appears to have been very different from that provided by the laws of 1837. In a department where revolution and disorder were the rule, and law and order the exception, the Mexican judiciary consisted primarily of alcaldes and justices of the peace, and the Governor in person was the appellate court.

"When a neighborhood needed the services of a magistrate, an alcalde was chosen on the spot, and he either acted for a single occasion, or continued to act for a longer or shorter period according to the pleasure of those who put him into his precarious office."⁶

The executive and legislative departments of the government appear to have functioned in a manner very similar to that prescribed by the law, although revolutions frequently caused changes of the personnel, and there were almost constant disputes between the governor, representing the civil authority, and the commandante, representing the military authority.

When the Americans took control of the province of California, many of them were unfamiliar with the Mexican system. And particularly after the immigration following the discovery of gold, the proportion who had any knowledge of the Spanish system was very small.

In the north the settlements were in a region where the Mexican government or law were never established and where there was no governmental organization whatever.

⁶ R. A. Wilson, Judge of First Instance, Sacramento, 1 California Reports, 574.

The Americans, after the occupation of California in 1846, revived the alcalde system. Wherever a group of Americans collected, they proceeded to elect an American alcalde⁷ who served as an adjuster of disputes and an administrator of the few local regulations. In cases involving the more serious criminal offenses, difficulties arose. When a regularly appointed judge was not available the miners frequently tried the cases by a jury without a judge. These "miner's courts" had the advantage of quickly and finally disposing of the cases. The administration of justice in the more remote mining districts appears to have been about as primitive and in many respects very similar to the administration of justice by the petty chiefs and "hundred courts" among the early Saxons.

The Law Which Was Administered

It was very seriously doubted at that time by the majority of the settlers, and even denied in the constitutional convention⁸ that any of the former Mexican laws were actually in effect in the territory, although it was affirmed that "the laws of California, not inconsistent with the laws, Constitution and treaties of the United States, are still in force, and must continue to be until changed by competent authority."⁹

The American alcaldes were usually completely ignorant of local Spanish customs and had no knowledge whatever of the civil or Spanish law, so that the law which was actually applied, insofar as it followed any system of law, was the common law.

And this, in spite of the fact that it was clear that there was no authorization for applying the common law, until it had been adopted by the legislature.¹⁰

Government Under the United States

At the same time that delegates were elected to the constitutional convention, officers to fill the administration and judicial offices as they were created by the Mexican law were voted upon. The prefects and judges of First Instance were executive appointments but General Riley called for an advisory vote and appointed those persons securing the largest vote.¹¹

The legislature was never organized but the prefects, subprefects and judicial officers held office until January 1, 1850.

⁷ Wilson, 1 California Reports, 577 (Appendix).

⁸ Browne, Debates, 274-277.

⁹ Riley, Proclamation Calling Convention, Browne, Debates, 3.

¹⁰ April 13, 1850.

¹¹ Riley, Proclamation Calling the Convention, Browne, Debates, p. 4; Justice Bennett, Preface 1 California Reports, p. VII. The election returns are in the archives of the office of the Secretary of State.

Judicial Opinions

When the American government was established the courts accepted jurisdiction of appeals from the alcaldes as well as from the courts which were instituted by General Riley.¹²

The Supreme Court decided that the whole body of Mexican law had been applicable to California, insofar as it did not conflict with the Constitution or the laws of the United States, until it was officially replaced by the Constitution of the State and the laws enacted by the legislatures.

The courts also gave the authority of law to customs which appeared to have been established in California, even when in direct conflict with the Mexican or Spanish law.¹³

American Immigration and Occupation

Early American Immigration

For several years previous to the war with Mexico, Americans had been moving into California as they had previously moved into Texas.

The number of Americans in California before about 1846 is not definitely known, but John Bidwell, an immigrant of 1841, said that in 1844 the Americans could not have mustered more than one hundred men, although most of the immigrants were able-bodied men.¹⁴ It is estimated that the population of California, exclusive of Indians, in 1846 was 10,000, about 2,000 of whom were foreigners and that most of these were Americans.¹⁵

New American immigration was primarily to the northern part of California. Yerba Buena, which later became San Francisco, was primarily an American settlement, though most of the Americans settled on large ranchos north and east of San Francisco Bay in the Napa, Sonoma and Sacramento Valleys.

This immigration, however, did not affect to an important degree the Spanish-Californian settlements of the south. Los Angeles was the largest city and San Diego, Santa Barbara, San Luis Obispo and San Buena Ventura were settlements of some importance. Farther north, Monterey, the capital, was the chief seaport and had as yet been almost unaffected by the American immigration. San Jose and Sonoma were the only important truly Spanish settlements farther north. Sutter's Fort, which could scarcely be called Spanish, had already become an important establishment.

¹² Preface to Cal. Reports by Justice Bennett, p. VII.

¹³ Von Schmidt vs. Huntington, 1 California Reports, 64; Farrand vs. Jones, 1 California Reports, 488.

¹⁴ Bidwell, Overland Monthly XVI, 563.

¹⁵ Hunt, The Genesis of California's First Constitution, John Hopkins Studies, Vol. 13, 30.

The Policy of the United States

The policy of the United States from the beginning of Polk's administration seemed to have been fixed on the annexation of California.¹⁶

Larkin, the American Consul at Monterey, under instructions from Washington, was undertaking to establish a sentiment in California favorable to annexation.¹⁷

The slave states particularly appeared to desire more slave territory. All the relations of California with the government of the United States were influenced and largely controlled by the slavery question in Congress.

Occupation of California

With the outbreak of the war with Mexico the United States Government directed the seizure of California by the American naval forces and dispatched General Kearny overland with troops.¹⁸

Commodore Sloat seized Monterey on July 7, 1846, and followed with the occupation of the other seaports and then the settlements of the interior, the occupation being complete by August 17, 1846.¹⁹

A group of American settlers at the instigation of Fremont, who was then on an exploring expedition in the west, had seized Sonoma and captured General Vallejo on June 14, 1846.

The Mexican government in California was not able to render any effective opposition to the occupation. The province was generally without military supplies and the population appeared almost entirely indifferent. They regarded Mexico almost as a foreign nation, and many of their leaders favored annexation to some foreign nation. There was a rather strong group, including Pio Pico, the governor, who favored annexation to England; but many more were favorable to annexation to the United States. General Vallejo appears to have been the leader of those favoring annexation to the United States.²⁰

The Mexican officials failed to cooperate in resisting occupation. At the time the occupation began, the governor, Pico, and the commandante, Castro, were attempting to raise armies for military operations against each other.²¹ There was no actual military opposition to the occupation.

Relation of California to the United States

The seizure of California as a military measure warranted only the occupation of the province during the period of the war but the expectation that California was to be annexed was clearly shown by Sloat in his first

¹⁶ Schouler, History IV, 446; 31st Congress, 1st Session, Dec. 17.

¹⁷ Bancroft, XXII, 54.

¹⁸ Bancroft, XXII, 195.

¹⁹ Bancroft, XXII, 230, 283.

²⁰ Bancroft, XXII, 67, 75.

²¹ Bancroft, XXII, 30, 53.

proclamation issued at Monterey, July 7, 1846, in which, after charging Mexico with the responsibility of the war, he said:

"I declare to the inhabitants of California that, although I come in arms with a powerful force, I do not come among them as an enemy to California: on the contrary. I come as their friend, as henceforward California will be a portion of the United States, and its peaceful inhabitants will enjoy the same rights and privileges as the citizens of any other portion of that territory, with all the rights and privileges they now enjoy, together with the privilege of choosing their own magistrates and other officers for the administration of justice among themselves: and the same protection will be extended to them as to any other state in the Union . . . With full confidence in the honor and integrity of the inhabitants of the country. I invite the judges, alcaldes, and other civil officers to retain their offices, and to execute their functions as heretofore, that the public tranquility may not be disturbed; at least until the government of the territory can be more definitely arranged. All persons holding titles to real estate, or in quiet possession of lands under a color of right, shall have those titles and rights guaranteed to them."²²

Sloat was soon replaced by Stockton, who had a far less conciliatory attitude toward the native Californians but who did make promises of a civil government. In his first proclamation, July 29, 1846, he said:

" . . . and all persons who may have belonged to the government of Mexico, but who from this day acknowledge the authority of the existing laws, are to be treated in the same manner as other citizens of the United States, provided they are obedient to the law and to the orders they shall receive from me or by my authority. The commander-in-chief does not desire to possess himself of one foot of California for any other reason than as the only means to save from destruction the lives and property of the foreign residents, and citizens of the territory who have invoked his protection. As soon, therefore, as the officers of the civil law return to their proper duties, under a regularly organized government, and give security for life, liberty, and property, alike to all, the forces under my command will be withdrawn, and the people left to manage their own affairs in their own way."²³

Revolt of the Californians

Sloat had assumed a very friendly attitude toward the Californians and had promised a stable government. Stockton, on the other hand, though he had renewed promises of a civil government, was of a very different temperament and assumed the attitude of an intimidating conqueror, and en-

²² Bancroft, XXII, 235.

²³ Bancroft, XXII, 256.

forced strict military law. The organization of a civil government by Stockton was delayed by a revolt in the southern part of the province, centering in Los Angeles; though it does appear that he had planned a civil government with Fremont as governor.²⁴

Civil Governors, But No Government

Before the revolt had been suppressed General Kearny had arrived overland from the "States" with instructions to organize a civil government. In a proclamation issued by General Kearny he promised the people that they would "soon be called upon to exercise their rights as free men, in electing their own representatives to make such laws as may be deemed best for the interest and welfare."²⁵

Kearny was unable to organize a civil government according to his plan, before he was succeeded by Colonel Mason."²⁶

Absence of Law and Government

By May, 1846, it appears that although the laws of Mexico were, according to international usages still in effect, the people had begun to feel that there were no laws actually in force but "the divine laws and the law of nature." And the editor of the *California Star*²⁷ was unable to discover any general written laws whatever.

Already the settlers had become very clamorous for a civil government and began to feel that they had been seriously wronged, if not wilfully deceived, with promises of a self-government.

Mason undoubtedly had full power to establish a temporary civil government, and apparently began studying the conditions and collecting and translating the Mexican laws which he believed to be in force.

"Mason's Code" appears to have been completed and possibly printed. Bancroft says that "Mason formerly promulgated a code printed in English and Spanish."²⁸ It appears certain, however, that the code of law was never actually promulgated, and probably not printed, though the *Californian* states distinctly that a code was printed.²⁹

Delay in Government

The expectation of peace with Mexico and a scheme for a civil government from Washington apparently caused a delay and possibly a relinquishment of Colonel Mason's plans for a civil government. It was expected that Congress, which was then in session, would certainly provide

²⁴ Bancroft, XXII, 413, 432, 468.

²⁵ *Californian*, March 13, 1847.

²⁶ May 31, 1847.

²⁷ March 27, 1847.

²⁸ Bancroft, XXII, 263.

²⁹ August 14, 1848.

some sort of government for California, irrespective of whether peace was declared. And Mason, rather than proceeding with his idea of a civil government, assumed a policy of "watchful waiting." Congress adjourned without providing any form of government.

No Action by Congress

The next session of Congress opened in December. President Polk, in his annual message, recommended that a "stable, responsible and free government be provided for California and New Mexico."³⁰ Congress, however, failed to take any action. Meanwhile gold had been discovered and when the news became disseminated a large immigration began.

Local Government Broken Down

To this time apparently there was little injury done through the absence of a civil government. In the south, the government continued with slight change. In the north, the majority of the American settlers and other foreigners had lived under the Mexican system and were somewhat familiar, at least, with the general system of government. They proceeded to elect alcaldes from among themselves and maintained at least a fair degree of order.³¹ With the new immigration conditions were changed. Many of the immigrants were of a lawless nature and as a whole they were reckless and adventuresome.

Most of the immigrants had come for gold with no idea of remaining permanently. The new immigration completely destroyed what appearance of government had remained in the north and the lawabiding persons became still more insistent upon some type of government. The people of San Francisco met the situation by organizing a new local government.³²

Effect of Peace

Even before immigrants began to arrive in large numbers, news was received of peace with Mexico. Legally, this terminated military rule. Tidings of peace were received by the people as opening the brightest possible prospect. Instead, however, of giving the people a civil government, the effect of peace was merely to take away the authority of the military government and leave the military organization with no further authority to act for the people than that of the presumed consent of the inhabitants.

Only two courses were open—to wait for Congress to provide a civil government or for the people to take the power into their own hands and

³⁰ 30th Congress, 2d Session, H. Ex., Doc. 1, 17.

³¹ 1 California Reports, 577.

³² Annals of San Francisco; 1 California Reports, 583.

organize a territorial or state government for themselves as the people of San Francisco had previously organized a municipal government.

In the *Star and Californian* of November, 1848, it was reported that Colonel Mason had, after a conference with Commodore Jones, decided that if Congress failed to provide for a government, he would immediately recommend "the appointment of delegates by the people to frame laws and to make their necessary arrangements for a provincial government for California."³³ By this time the population generally appears to have despaired of any action by Congress.

People Take Action

On December 11, 1848, the citizens of San Jose met "for the purpose of taking into consideration the propriety of establishing a provincial territorial government for the better protection of life and property" until Congress should provide a government for California. They adopted resolutions recommending that a general convention meet in San Jose.³⁴ Similar meetings were held in Sacramento, San Francisco and Sonoma.³⁵ There appears to have been a general popular feeling supporting the movement for the organization of an effective government.

In the spring of 1849, General Riley became *de facto* Governor, succeeding General Smith, who had been Governor for a short time following Colonel Mason. General Riley continued the policy of awaiting action of Congress.

From the time the treaty of peace was signed with Mexico, California had been practically without government, except that provided by the local alcaldes, and yet Congress adjourned for the third time without having made any provision for a government for California.

After gold had been discovered, even the few soldiers who remained under the control of the military governor and the sailors on the ships deserted, and conditions became so bad that there were scarcely men enough to guard the few military supplies.³⁶

The population had increased from 10,000 in the summer of 1846 to 26,000 by the end of 1848, and to 50,000 by August of the next year.³⁷ The new settlements usually elected alcaldes and when drastic action became necessary "miner's courts" convened and took such summary action as the conditions appeared to require.³⁸

³³ *Star and Californian*, December 16, 1848.

³⁴ *Star and Californian*, December 23, 1848.

³⁵ *Alta Californian*, January 25, February 22, March 22, 1849.

³⁶ Bancroft XXIV, 445-460.

³⁷ *Californian*, August 22, 1846; *Overland Monthly* XVI, 287.

³⁸ 1 California Reports, 577.

General Riley Calls the Constitutional Convention

General Riley proved to be more energetic than his predecessors and upon receipt of news that Congress had adjourned without provision for a government in California, he immediately asserted his authority by issuing a call for a constitutional convention. The people through local meetings in the various communities had already recommended the calling of a convention, and were inclined to dispute the authority of General Riley.³⁹ The difficulty was adjusted by the local organizations changing the date of their proposed convention to the date fixed by General Riley in his proclamation. The convention was called to meet at Monterey on September 1, 1849.

THE FIRST CONSTITUTION The Constitutional Convention

On September 1, 1849, 10 delegates to the constitutional convention met at Colton Hall in Monterey. They elected a temporary chairman and secretary and adjourned until Monday, September 3. On Monday there were 28 members present.

The first matter taken up was the eligibility of members and the distribution of the representation. In the proclamation calling the convention General Riley had directed that "the district of San Diego will elect two delegates, of Los Angeles four, of Santa Barbara two, of San Luis Obispo two, of Monterey five, of San Jose five, of San Francisco five, of Sonoma four, of Sacramento four, of San Joaquin four. Should any district think itself entitled to a greater number of delegates than the above named, they may elect supernumeraries, who, on the organization of the convention, will be admitted or not at the pleasure of that body."⁴⁰

In order to make a proper adjustment for the increasing population in some of the districts and possibly to adjust an unequal apportionment, the convention provided that the districts should be entitled to the following representation:

"San Diego, two; Los Angeles, seven; Santa Barbara, three; San Luis Obispo, two; Monterey, five; San Jose, seven; San Francisco, nine; Sonoma, six; Sacramento, fifteen; and San Joaquin, fifteen."⁴¹

³⁹ Hunt, *Genesis of California's First Constitution*, 29.

⁴⁰ Browne, *Debates*, 4.

⁴¹ Browne, *Debates*, 4.

The Delegates

The persons who actually took part in the convention were the following:⁴²

Name	Age	Where born	District in California	Length of residence	Profession
J. D. Hoppe	35	Maryland	San Jose	3 years	Merchant
Joseph Aram	39	New York	San Jose	3 years	Farmer
Elam Brown	52	New York	San Jose	3 years	Farmer
Jacob R. Snyder	34	Pennsylvania	Sacramento	4 years	Surveyor
Winfield S. Sherwood	32	New York	Sacramento	4 months	Lawyer
H. W. Halleck	32	New York	Monterey	3 years	U. S. Engineer
L. W. Hastings	30	Ohio	Sacramento	6 years	Lawyer
J. A. Sutter	47	Switzerland	Sacramento	10 years	Farmer
John McDougal	32	Ohio	Sacramento	7 months	Merchant
E. O. Crosby	34	New York	Sacramento	7 months	Lawyer
M. M. McCarver	42	Kentucky	Sacramento	1 year	Farmer
Julian Hanks	39	Connecticut	San Jose	10 years	Farmer
Kimball H. Dimmick	34	New York	San Jose	3 years	Lawyer
Thomas O. Larkin	47	Massachusetts	Monterey	16 years	Trader
Lewis Dent	26	Massachusetts	Monterey	3 years	Lawyer
Rodman M. Price	30	New York	San Francisco	4 years	U. S. Navy
Ch. T. Botts	40	Virginia	Monterey	16 months	Attorney at Law
M. G. Vallejo	42	California	Sonoma	All my life	Military
Manl. Dominguez	46	California	Los Angeles	All my life	Banker
Antonio M. Pico	40	California	San Jose	All my life	Agriculturist
Jacinto Rodriguez	36	California	Santa Barbara	All my life	Agriculturist
Henry A. Telft	26	New York	San Luis Obispo	4 months	Lawyer
Pedro Sansevain	31	France	San Jose	11 years	Negotiant
Hugo Reid	38	Scotland	Los Angeles	16 years	Farmer
Stephen C. Foster	28	Maine	Los Angeles	3 years	Agriculturist
J. McH. Hollingsworth	25	Maryland	San Joaquin	3 years	Lieut. Volunteers
Joseph Hobson	39	Maryland	San Francisco	5 months	Merchant
Pacificus Ord	34	Maryland	Monterey	8 months	Lawyer
O. M. Wosencraft	34	Ohio	San Joaquin	4 months	Physician
J. P. Walker	52	Virginia	Sonoma	13 months	Farmer
W. E. Shannon	27	Ireland	Sacramento	3 years	Lawyer
Abel Stearns	51	Massachusetts	Los Angeles	20 years	Merchant
Thos. L. Vermeule	35	New Jersey	San Joaquin	3 years	Lawyer
Benj. S. Lippincott	34	New York	San Joaquin	3½ years	Trader
Myron Norton	27	New York	San Francisco	1 year	Lawyer
W. M. Steuart	29	Maryland	San Francisco	1 year	Attorney at Law
B. F. Moore	29	Florida	San Joaquin	1 year	Elegant leisure
A. J. Ellis	33	New York	San Francisco	2½ years	Merchant
Edw. Gilbert	27	New York	San Francisco	2½ years	Printer
J. M. Jones	25	Kentucky	San Joaquin	4 months	Attorney at Law
W. M. Gwin	44	Tennessee	San Francisco	4 months	Farmer
José Anto. Carrillo	53	California	Los Angeles	All my life	Labrador (Sp.) Farmer
Francis J. Lippitt	37	Rhode Island	San Francisco	2 years 7 months	Lawyer
Henry Hill	33	Virginia	San Diego	1 year 5 months	U. S. Army
Miguel de Pedroena	41	Spain	San Diego	12 years	Merchant
R. Semple	42	Kentucky	Sonoma	5 years	Printer
P. de la Guerra	36	California	Santa Barbara
J. M. Covarrubias	40	California	San Luis Obispo and Santa Barbara

⁴² Browne, Debates, 478.

It will be noticed that the original number of delegates called by General Riley was 37; that the representation as apportioned by the convention was 73, but that only 48 members attended the convention. The northern districts in particular did not send the number of delegates allotted to them.

Most of the members were young men, more than thirty of them were less than 40 years of age, nine were less than 30 years of age, and the oldest was 53. The occupations were varied. There were 14 lawyers, 11 farmers and 7 merchants. It is probable that a large number of the members were, temporarily at least, miners. Fifteen of the members may be considered as from the southern states and there were 23 members from the northern states. The northern members had also on the average been in California for a greater number of years. There were seven native Californians, and five foreign-born members, one from France, one from Scotland, one from Switzerland, one from Ireland and one from Spain.

Organization of the Convention

The convention was organized on September 4th. Robert Semple, delegate from Sonoma, was elected president and William G. Marcy was elected secretary. W. E. P. Hartnell was elected translator for the Spanish-speaking members and various other lesser officers were elected. J. Ross Browne was elected reporter.

There are several of the members who deserve particular mention.⁴³ The president, Dr. Semple, who had been a resident of California for five years, proved to be a tactful and capable presiding officer, although technically, many of his decisions on procedure were not correct. He had been the founder of Benicia and had taken an active part in the revolt of the American settlers in 1846. H. W. Halleck was acting as Secretary of State under General Riley, in addition to being a member of the convention and appears to have served both offices very well. He later received some note as a general during the Civil War. William M. Gwin, a southerner, who had last resided in Louisiana, was one of the leading members of the convention. He had been a member of Congress, had recently sat in the constitutional convention in Iowa and had come to California but four months before in order to become a Senator from the new State. Thomas O. Larkin had been the United States Consul to California and had taken an active part in the occupation. Edward Gilbert, publisher of the *Alta Californian*, was a leading member from San Francisco. Foster, Crosby, Dimmick and Hastings were leading northern men. Botts, a Virginian, was one of the most capable southern members and a lawyer of ability. James M. Jones was also another capable lawyer and supporter of the south. The more prominent Spanish members were Carrillo, De la Guerra and Vallejo who appears to have been strongly pro-American in spite of humiliating treat-

⁴³ The descriptions of the members are taken from Bancroft XXII, 285, 287.

ment received during the revolt in 1846. Of the foreign-born delegates Captain Sutter stands out very prominently.

State vs. Territorial Government

Before the convention proceeded with the drawing up of the Constitution, Halleck secured a direct vote on the question of whether a state or territorial government was to be organized. The only opposition to a State Government came from the southern part of the State. The vote favoring a state government was 28 to 8.⁴⁴

Procedure in the Convention

When the convention proceeded to the formation of the new Constitution, McCarver moved that the committee take the Constitution of Iowa as a basis for the proposed Constitution. Mr. Gwin explained that he had selected the Constitution of Iowa to be used as a basis for the new Constitution "because it was one of the latest and shortest" and that he had secured several copies for the use of the convention.⁴⁵ The method of procedure adopted was that proposed by Mr. Gilbert, of appointing a committee of two members from each district who should propose the new Constitution article by article. The first article, the "Bill of Rights," was reported on September 7th and the committee reported additional articles as each article was disposed of.

Important Problems of the Convention

The Bill of Rights as submitted by the committee made no reference to the question of slavery, but on motion of Mr. Shannon a section prohibiting slavery was adopted without opposition.

The first question upon which there was much debate was as to the matter of excluding free Negroes. It was finally decided to leave that question to the Legislature.

Another matter of controversy arose as to the right of a judge in charging juries to "state the testimony and declare the law." Yet finally the convention adopted the report of the committee giving the judges that power. Violent opposition was shown to corporations and particularly to banking corporations. Reference was frequently made to the panic of 1837, which was still fresh in the minds of many of the members. It was finally provided that "corporations may be formed under general laws, but shall not be created by special act," and "that no corporate body shall be created, renewed or extended with the privileges of making, issuing or putting in circulation any bill, check, ticket, certificate, promissory note, or other paper, or the paper of any bank to circulate as money."⁴⁶

⁴⁴ Browne, Debates, 23.

⁴⁵ Browne, Debates, 24.

⁴⁶ Browne, Debates, 119.

In providing for a school system it was expected that the Government of the United States would allot considerable land to be used for school purposes and so no other provisions were made for financing the schools, but it was provided that "the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral and agricultural improvements" and schools were required to be maintained for at least three months each year.⁴⁷

Questions of taxation were generally left to the Legislature, except that it was provided that assessors shall be elected by the local districts. This was a concession to the southern part of the State where most of the taxable property was located. The Legislature was authorized to secure a loan of not to exceed \$300,000.

A section was adopted which provided that married women might have separate property. This was adopting a principle of the civil law in preference to the common law and continuing in effect the law as it had previously existed in California.⁴⁸

The Boundary Question

The problem of the convention over which there was the most controversy was the fixing of the eastern boundary.⁴⁹ One group wished the eastern boundary to be the Sierra Nevada Mountains, while another wished to include the entire region ceded to the United States by Mexico, and which would include Utah and Nevada. After much heated discussion the present boundary was decided upon as a compromise, though it is scarcely east of the mountains. The arguments against the larger state were that the State would be so large that it could not be fairly represented in the Legislature nor the laws efficiently or effectively administered; that the large size would probably cause the State to be divided later, in which case it might lose some of its most valuable territory; that Congress would hesitate and might delay or deny the admission of the entire territory as one state. But the argument which appeared to finally settle the dispute was that there was in Utah a population of about 30,000, who had no representation in the convention, and the convention had no right to include them in the proposed State without their consent.

The Government Provided

The government provided for California by the convention was very similar to the present State Government. There were to be a Governor, Lieutenant Governor, Secretary of State and certain other elective executive and administrative officers. The Legislative Department was to consist of two houses to be called the Senate and the Assembly. The Governor was given the usual veto power. The Judicial Department, while very simi-

⁴⁷ Constitution of 1849, Art. IX.

⁴⁸ Art. XI, Sec. 13.

⁴⁹ Browne, Debates, 154, 123-124, 167-169, 418-461.

lar to that of the other states, was a continuation of the Mexican courts established by the law of 1837 with the one modification, that the Justices of the Supreme Court did not sit separately as judges of the district courts as the corresponding judges had done under the Mexican system. The Committee on the Constitution recommended that the Mexican system of courts be continued but the proposed article was amended to provide that Judges of the Supreme Court should not sit separately as judges of the courts of second instance, which were to be called district courts.

Sources of the Constitution

The Constitution of 1849 is rather a compilation of parts of the constitutions of the other states than an original document.

The members of the convention were well suited by experience for the work of compilation. Thirty-eight of the delegates had been citizens of 21 different states, and the 14 lawyers had been citizens of 11 of the states.

The constitutions of all of the states appear to have been used by the convention. On four different occasions the constitutions were referred to collectively and on one occasion Halleck stated that the committee on the Constitution was working "with the constitutions of every state in the Union before it."⁵⁰

Twenty of the state constitutions and the Federal Constitution were mentioned in the debates, some of them several times.⁵¹

It is not always possible to determine the exact influence the various constitutions had on the Constitution of California, but most of the sections can be traced back to the constitutions of particular states.

In arrangement, the Constitution follows generally the Constitution of Iowa. Sixty-six of the 137 sections of the original Constitution of California appear to have been taken from the Constitution of Iowa, and 19 from the Constitution of New York. It is clear also that sections from the Constitutions of the States of Louisiana, Wisconsin, Michigan, Texas and Mississippi, and of the United States, were adopted. The sources of the other sections of the constitution are not clear. Some sections appear to be modifications of sections from other constitutions and some sections appear to be original.⁵²

The First Constitution

The Constitution was divided into 13 parts consisting of 12 articles and a schedule.

⁵⁰ Browne, Debates, 25, 27, 36, 40, 221.

⁵¹ Browne, Debates, 37, 56, 69, 70, 77, 110, 132, 165, 235, 248, 250, 292, 371, 380, 384.

⁵² For further information on the sources of the Constitution see Goodwin, *The Establishment of State Government in California*, 230-243.

Article I—The Bill of Rights

The first article was a declaration of rights, which provided that all men were free and independent,⁵³ that political power was inherent in the people,⁵⁴ guaranteed trial by jury⁵⁵ and freedom of religion,⁵⁶ that the writ of habeas corpus should not be suspended,⁵⁷ that excessive bail should not be required,⁵⁸ guaranteed free speech,⁵⁹ the right of free assembly,⁶⁰ provided that laws of a general nature should have a uniform operation.⁶¹ It provided that the military power should be subordinate to civil power,⁶² and that soldiers should not be quartered in private houses in time of peace.⁶³ It required that representation should be apportioned according to population.⁶⁴ No person should be imprisoned for debt,⁶⁵ and no bill of indenture, ex post facto law or law impairing operation of contract should be passed.⁶⁶ Foreigners who were residents of the State were granted the same right with respect to possession, enjoyment and inheritance of property as citizens.⁶⁷ Slavery was prohibited.⁶⁸ Unreasonable searches were forbidden.⁶⁹ Treason against the State was defined.⁷⁰ It was provided that the enumeration of rights should not be construed to deny others retained by the people.⁷¹

Article II—Suffrage

The right of suffrage was granted to "every white male citizen of the United States and every white male citizen of Mexico who shall have elected to become a citizen of the United States under the terms of the Treaty of Peace exchanged at Querétaro on the thirtieth day of May, 1848, of the age of 21 years, who shall have been a resident of the United States for six months preceding the election and the county or district for 30 days in which he claims to vote," and the Legislature was authorized by a two-thirds vote to admit Indians or descendants of Indians to the right of suffrage.⁷² Electors were privileged from arrest, except for treason, felony, breach of peace, during attendance at elections,⁷³ and were not to be re-

⁵³ Sec. 1.

⁵⁴ Sec. 2.

⁵⁵ Sec. 3.

⁵⁶ Sec. 4.

⁵⁷ Sec. 5.

⁵⁸ Secs. 6, 7.

⁵⁹ Sec. 9.

⁶⁰ Sec. 10.

⁶¹ Sec. 11.

⁶² Sec. 12.

⁶³ Sec. 13.

⁶⁴ Sec. 14.

⁶⁵ Sec. 15.

⁶⁶ Sec. 16.

⁶⁷ Sec. 17.

⁶⁸ Sec. 18.

⁶⁹ Sec. 19.

⁷⁰ Sec. 20.

⁷¹ Sec. 21.

⁷² Sec. 1.

⁷³ Sec. 2.

quired to perform military duty on election day except in time of war or public danger.⁷⁴ Residence for the purpose of voting was not gained or lost by the presence in or absence from the district while employed by the United States or in commerce, on the high seas, or as students.⁷⁵ Idiots, insane persons, and persons convicted of crime were not eligible to vote.⁷⁶ All elections were to be by ballot.⁷⁷

Article III—Distribution of Powers

Article III contained the provision concerning separation of powers and was as follows:

“The powers of the government of the State of California shall be divided into three separate departments: the legislative, the executive, and judicial; and no person charged with the exercise of powers properly belonging to one of these departments shall exercise any functions pertaining to either of the others, except in the cases hereinafter expressly directed or permitted.”

Article IV—Legislative Department

The legislative power of the State was vested in the Senate and Assembly.⁷⁸ Sessions of the Legislature⁷⁹ and elections of Assemblymen were to be annually.⁸⁰ Senators were to be elected biennially⁸¹ and were to be divided into two classes as nearly equal as practicable, one-half of whom were to be chosen each year.⁸² Members were required to be qualified electors of the district from which elected.⁸³ Each house was to choose its own officers and to be judge of the election of its members,⁸⁴ to determine its own rules,⁸⁵ and to keep a journal of its proceedings.⁸⁶ A majority was to constitute a quorum.⁸⁷ Members were privileged from arrest and civil process except for treason, felony or breach of the peace, from 15 days before the commencement until 15 days after the termination of each session.⁸⁸ The Governor was to issue writs of election to fill vacancies.⁸⁹ The sessions were to be public except when in the opinion of the house secrecy

⁷⁴ Sec. 3.

⁷⁵ Sec. 4.

⁷⁶ Sec. 5.

⁷⁷ Sec. 6.

⁷⁸ Sec. 1.

⁷⁹ Sec. 2.

⁸⁰ Sec. 3.

⁸¹ Sec. 5.

⁸² Secs. 6, 7.

⁸³ Sec. 4.

⁸⁴ Sec. 8.

⁸⁵ Sec. 10.

⁸⁶ Sec. 11.

⁸⁷ Sec. 9.

⁸⁸ Sec. 12.

⁸⁹ Sec. 13.

was required.⁹⁰ Neither house was to adjourn for more than three days without the consent of the other.⁹¹ Bills might originate in either house and be amended in the other.⁹²

After a bill had been passed by both houses it was to be submitted to the Governor for his approval; if he disapproved of it he should return it with his objections and the bill should be reconsidered and in case it received a two-thirds vote of the members of each house, it should become a law despite the Governor's objection. In case the bill should not be returned within 10 days, Sunday excepted, it should become a law unless the Legislature by adjournment prevented the return.

No Member of the Legislature was to be eligible to an office which was created or the salary of which was increased during the time of his service,⁹³ nor might he hold any lucrative office under the United States.⁹⁴ The Assembly was given the power of impeachment and impeachments were to be tried by the Senate.⁹⁵ The officers subject to impeachment were the Governor, the state administrative officers and justices of the Supreme and district courts.⁹⁶ Every person convicted of embezzlement was declared to be ineligible to any office of the State.⁹⁷ Money might be drawn from the Treasury only in consequence of appropriations made by law.⁹⁸

Every law was required to have but one subject which should be stated in the title and when any section was amended it was required to be re-enacted and published at length.⁹⁹

The Legislature was denied the right to grant divorces¹⁰⁰ or authorize lotteries.¹⁰¹

A census was required to be taken in 1852, in 1855 and every 10 years thereafter.¹⁰² The Legislature was to divide the State into legislative districts¹⁰³ but no county should be divided in the making of such districts.¹⁰⁴

"Corporations may be formed under the general laws but shall not be created by special act except for municipal purposes."¹⁰⁵ Each stockholder of a corporation was made personally liable for his proportion of

⁹⁰ Sec. 14.

⁹¹ Sec. 15.

⁹² Sec. 16.

⁹³ Secs. 20, 24.

⁹⁴ Sec. 21.

⁹⁵ Sec. 18.

⁹⁶ Sec. 19.

⁹⁷ Sec. 22.

⁹⁸ Sec. 23.

⁹⁹ Sec. 25.

¹⁰⁰ Sec. 26.

¹⁰¹ Sec. 26.

¹⁰² Sec. 28.

¹⁰³ Sec. 29.

¹⁰⁴ Sec. 30.

¹⁰⁵ Sec. 31.

its liabilities,¹⁰⁶ and the corporators were to be liable for fees from corporations¹⁰⁷ and joint stock companies.¹⁰⁸

The Legislature was required to provide for the organization of cities.¹⁰⁹

In elections by the legislatures the members were required to vote *viva voce* and the votes were to be entered in the journal."¹¹⁰

Article V—Executive Department

The supreme executive power of the State was vested in the Governor,¹¹¹ who was to be elected in the same manner as Members of the Assembly, and to hold office for two years.¹¹² To be eligible to the office of Governor, a person was required to be a citizen of the United States, a resident of the State for two years and to be 25 years of age.¹¹³

The election returns for the office of Governor were required to be submitted to the Legislature and to be opened and published in the presence of both houses.¹¹⁴

The Governor was made commander in chief of the militia.¹¹⁵ He was directed to transact all executive business¹¹⁶ and to see that the laws were faithfully executed.¹¹⁷ Whenever a vacancy in a state office occurred where no provision for a successor had been made the Governor was authorized to fill the vacancy until the next election.¹¹⁸

The Governor was empowered to call special sessions of the Legislature,¹¹⁹ and directed to present his message on the condition of the State at each session¹²⁰ and in case of a disagreement as to the time of adjournment, he might adjourn the Legislature.¹²¹

No person while holding an office of the United States was eligible to act as Governor.¹²²

The Governor was authorized to grant reprieves and pardons, a record of which he was required to transmit to the next session of the Legislature.¹²³

¹⁰⁶ Sec. 36.

¹⁰⁷ Sec. 32.

¹⁰⁸ Sec. 33.

¹⁰⁹ Sec. 37.

¹¹⁰ Sec. 38.

¹¹¹ Sec. 1.

¹¹² Sec. 2.

¹¹³ Sec. 3.

¹¹⁴ Sec. 4.

¹¹⁵ Sec. 5.

¹¹⁶ Sec. 6.

¹¹⁷ Sec. 7.

¹¹⁸ Sec. 8.

¹¹⁹ Sec. 9.

¹²⁰ Sec. 10.

¹²¹ Sec. 11.

¹²² Sec. 12.

¹²³ Sec. 13.

The Great Seal of the State was to be kept by the Governor¹²⁴ and all grants and commissions made in the name of the State were to be sealed by such seal.¹²⁵

The Lieutenant Governor was to be elected in the same manner as the Governor. He was to be President of the Senate and have a vote in case of a tie.¹²⁶

In case of a vacancy in the office of Governor, the Lieutenant Governor should act as Governor.¹²⁷ During any vacancy in the office of Governor and Lieutenant Governor the President pro Tempore of the Senate should act as Governor.¹²⁸

A Comptroller, a Treasurer, an Attorney General and a Surveyor General were to be elected in the same manner and for the same term as the Governor.¹²⁹

The Secretary of State was to be appointed by the Governor with the advice and consent of the Senate.¹³⁰ The other executive state officers to act during the first term were to be chosen by the joint vote of the two houses of the Legislature.¹³¹

The executive officers were to receive a regular compensation but were to receive no fees for the performance of their duties.¹³²

Article VI—Judicial Department

The judicial power of the State was vested in a Supreme Court, in district courts, county courts and justices' courts.¹³³

The Supreme Court was to consist of a Chief Justice and two associate Justices,¹³⁴ who were to be elected by the people for six-year terms.¹³⁵ The Supreme Court was given appellate jurisdiction in all cases in which the matter in dispute exceeded \$200 in value, in all cases involving the legality of taxes and in questions of law in criminal cases amounting to felonies.¹³⁶

The Legislature was directed to divide the State into judicial districts in which were to be organized district courts. The judges of the district courts were to be elected by the people for terms of six years.¹³⁷ The district courts were given original jurisdiction in civil cases where the amount in

¹²⁴ Sec. 14.

¹²⁵ Sec. 15.

¹²⁶ Sec. 16.

¹²⁷ Sec. 17.

¹²⁸ Sec. 16.

¹²⁹ Sec. 18.

¹³⁰ Sec. 19.

¹³¹ Sec. 20.

¹³² Sec. 21.

¹³³ Sec. 1.

¹³⁴ Sec. 2.

¹³⁵ Sec. 16.

¹³⁶ Sec. 6.

¹³⁷ Sec. 5.

dispute exceeded \$200, and unlimited jurisdiction in criminal cases and questions of fact raised in probate cases.¹³⁸

The Legislature was to provide for the election by the people of district attorneys, sheriffs, and the other necessary officers.¹³⁹

There was to be a county court in each county. The judge was to be elected for a term of four years. These courts were to have jurisdiction of probate cases, of appeals from justices' courts¹⁴⁰ and such other cases as the Legislature might prescribe.¹⁴¹

The Legislature was directed to determine the number of justices of the peace to be elected in the different counties and cities and fix their powers, duties and responsibilities.¹⁴²

No judicial officers except justices of the peace were to receive fees.¹⁴³

The Legislature was authorized to establish courts of arbitration, whose decisions were to be binding only when the parties had voluntarily submitted their dispute.¹⁴⁴

The judges of the Supreme and district courts were to receive salaries which were not to be increased during their terms of office¹⁴⁵ and they were made ineligible to any other office during such terms.¹⁴⁶

Judges were forbidden to "charge juries with respect to matter of fact, but may state the testimony and declare the law."¹⁴⁷

All process was to be in the name of the "People of the State of California."¹⁴⁸

The Legislature was directed to provide for a speedy publication of the statutes and judicial decisions.¹⁴⁹

Article VII—The Militia

The Legislature was directed to provide for a militia¹⁵⁰ which might be called out by the Governor.¹⁵¹ The officers were to be selected in a manner provided by the Legislature and commissioned by the Governor.¹⁵²

Article VIII—State Debts

The Legislature was authorized to incur indebtedness of not to exceed \$300,000 without special authorization, and was also authorized to incur.

¹³⁸ Sec. 6.

¹³⁹ Sec. 7.

¹⁴⁰ Sec. 8.

¹⁴¹ Sec. 9.

¹⁴² Sec. 14.

¹⁴³ Sec. 11.

¹⁴⁴ Sec. 13.

¹⁴⁵ Sec. 15.

¹⁴⁶ Sec. 16.

¹⁴⁷ Sec. 17.

¹⁴⁸ Sec. 18.

¹⁴⁹ Sec. 12.

¹⁵⁰ Sec. 1.

¹⁵¹ Sec. 3.

¹⁵² Sec. 2.

with the approval of the voters at a general election, further debt "for some single object or work, to be distinctly specified."

Article IX—Education

A Superintendent of Public Instruction was to be elected to serve for a term of three years.¹⁵³ A system of common schools was to be maintained¹⁵⁴ and any money derived from land granted by the United States for the use of the common schools was to be held as a trust fund for that purpose.¹⁵⁵ Similar provision was made for a state university.

Article X—Mode of Amending and Revising the Constitution

Amendments to the Constitution were to be proposed at two successive sessions of the Legislature by a majority vote of all the members elected to each house, subject to approval by "a majority of the electors qualified to vote for Members of the Legislature."¹⁵⁶ A convention to revise the Constitution might be proposed by two-thirds of the members of both houses.¹⁵⁷

Article XI—Miscellaneous Provisions

San Jose was to be the "permanent seat of government until removed by law."¹⁵⁸ Any citizen who should fight a duel was disfranchised.¹⁵⁹ State officers were to take a prescribed oath.¹⁶⁰ The Legislature was to provide a system of county and town governments¹⁶¹ and for the election of county boards of supervisors.¹⁶² Officers whose selection was not provided for were to be elected or appointed as the Legislature might direct.¹⁶³ Terms of office were not to exceed four years.¹⁶⁴ The fiscal year was to begin on July 1st.¹⁶⁵ Each political subdivision was to support its own officers.¹⁶⁶ The state credit was not to be loaned.¹⁶⁷ Suits against the State were to be regulated by law.¹⁶⁸ Marriages were not invalidated by failure to comply with requirements of any religious sect.¹⁶⁹ Taxes were to be uniform throughout the State, and assessors and tax collectors were to be elected by the district in which the property to be taxed was situated.¹⁷⁰ Owner-

¹⁵³ Sec. 1.

¹⁵⁴ Sec. 2.

¹⁵⁵ Sec. 3.

¹⁵⁶ Sec. 1.

¹⁵⁷ Sec. 2.

¹⁵⁸ Sec. 1.

¹⁵⁹ Sec. 2.

¹⁶⁰ Sec. 3.

¹⁶¹ Sec. 4.

¹⁶² Sec. 5.

¹⁶³ Sec. 6.

¹⁶⁴ Sec. 7.

¹⁶⁵ Sec. 8.

¹⁶⁶ Sec. 9.

¹⁶⁷ Sec. 10.

¹⁶⁸ Sec. 11.

¹⁶⁹ Sec. 12.

¹⁷⁰ Sec. 13.

ship of separate property was provided for married women,¹⁷¹ and homesteads were to be protected from forced sale.¹⁷² Perpetuities were not allowed except for eleemosynary purposes.¹⁷³ Conviction for crime was to disqualify for office.¹⁷⁴ Absence from the State on the business of the State or of the United States was not to affect the question of residence.¹⁷⁵ A plurality of votes was to elect.¹⁷⁶ All laws, decrees, etc., which required publication were to be published in both English and Spanish.¹⁷⁷

Article XII—Boundary

The boundary was fixed as it now exists.

Schedule

A schedule followed the other provisions of the Constitution and provided for the vote upon it and for its taking effect.

Adoption of the Constitution

The constitutional convention adjourned on October 13, 1849, and the date for the vote on the adoption of the Constitution and the election of prospective Governor and Lieutenant Governor and Members of the Legislature was November 13. Copies of the proposed Constitution were printed and distributed as quickly as possible. Candidates were nominated by mass meetings and usually ran without party designation.

The vote on the Constitution was 12,872 for and 811 against.¹⁷⁸ The small vote was probably due to the election day being very stormy. Most of the votes against the Constitution were cast in the Sacramento and San Joaquin districts.

Organization of the State Government

The first Legislature met at San Jose on December 15, 1849. When the election returns were canvassed Peter H. Burnett was found to be elected Governor, and John McDougal, Lieutenant Governor. John C. Fremont and William M. Gwin were elected Senators. State administrative officers and justices of the Supreme Court were also elected.¹⁷⁹

The Legislature authorized a loan of \$200,000¹⁸⁰ and provided a system of taxation.¹⁸¹

¹⁷¹ Sec. 14.

¹⁷² Sec. 15.

¹⁷³ Sec. 16.

¹⁷⁴ Secs. 17 and 18.

¹⁷⁵ Sec. 19.

¹⁷⁶ Sec. 20.

¹⁷⁷ Sec. 21.

¹⁷⁸ The official returns are in the archives of the Secretary of State at Sacramento.

¹⁷⁹ Bancroft XXIII, 311–314.

¹⁸⁰ Journals of the California Legislature, 1850, pp. 630, 640, 650.

¹⁸¹ Statutes of 1850, p. 54.

The common law was adopted as the law of the State.¹⁸² Governor Burnett had recommended that the English merchant law and the definitions of crimes and the Civil Code and Code of Procedure of Louisiana be adopted.

The Legislature passed acts fixing the jurisdiction of the courts and rather comprehensive acts governing criminal and civil procedure.¹⁸³

The State was divided into 25 counties,¹⁸⁴ and provision was made for the incorporation of cities.¹⁸⁵

The State was organized and began to function exactly as though it were a part of the Union.

Admission of California Into the Union

The Legislature elected Senators to the United States Senate and sent them with representatives to Washington to urge the admission of California into the Union as a state. These senators were John C. Fremont and William M. Gwin. The delegation worked strenuously to secure the admission of the State to the Union at an early date. There was still further delay and California was not finally admitted to the Union until September 9, 1850.

Amendments to the First Constitution

The only important amendments to the first Constitution were adopted in 1862, although minor amendments were adopted in 1857 and 1871. They provided that the term of the Governor be increased from two to four years, that the Secretary of State be elected, and completely revised and re-enacted Article VI, relating to the Judicial Department. The effect of the amendments was to provide for recorder's courts and court commissioners, and in general to revise and amplify the provisions of the Constitution relating to the courts.

Defects of the First Constitution

The first Constitution was not entirely satisfactory, as no constitution or law can ever be. The principal faults charged to the new Constitution were faults of omission.¹⁸⁶ It was said that the old Constitution was "dumb" on the subject of finance, that all of the regulations concerning taxation "did not occupy four lines." The Legislature might impose any tax which it might desire and as a result much capital had been driven from the State. The expenditure of money was entirely unchecked. The Legislature was unlimited as to the salaries it might allow to its members or other state officers. No check was established against extravagant fees which might be allowed for any official service. There was nothing to prevent the Legisla-

¹⁸² Journals of the California Legislature, 1850, pp. 323, 1123, 1204.

¹⁸³ Statutes 1850, p. 275.

¹⁸⁴ Journals of the California Legislature, 1850, pp. 156, 849; Statutes 1850, p. 58.

¹⁸⁵ Journals of the California Legislature, 1850, pp. 190, 229, 944, 1026; Statutes 1850, p. 87.

¹⁸⁶ Summarized in Bancroft XXIV, 370, 371.

ture from disposing of the entire property of the State. No provision was made for separate senatorial and assembly districts and the members elected at large from the more populous counties controlled the Legislature. The number of members of the Assembly was limited to 40 and yet there were counties which had no representation in that house. Another defect frequently objected to was the unlimited pardoning power of the Governor. The real dissatisfaction which resulted in calling the second constitutional convention appears to have arisen from the financial depression of the time. In San Francisco, desire for radical changes in the Constitution had been particularly evident. A native of that city named Denis Kearney had gathered about himself a group of radicals and organized a "working-man's" party which demanded some substantial changes.

The Second Constitution

The Convention Called

The Legislature had proposed the calling of a second constitutional convention in 1859, 1860 and 1873, but each time the proposal had been voted down at the election. A convention was again proposed in 1877. This time it was approved at the election and provision was made for the immediate meeting of the convention. As early as April, 1878, attempts were made to organize a single nonpartisan organization. The 152 delegates who were elected to the convention in September were divided into three groups: There were 85 nonpartisan delegates, 50 "Kearneyites or Workingman's Party delegates" and 17 elected on the regular party tickets, nine of whom were Republicans and eight Democrats. The large number of foreign-born delegates caused considerable comment at the time. There were 35 foreign-born delegates in the convention, most of whom were Irish and 19 of whom were from San Francisco.¹⁸⁷

The Convention

No members of the convention were particularly conspicuous. Joseph F. Hoge of San Francisco was elected president and appeared to be a capable presiding officer. Edwin F. Smith was elected secretary of the convention. The work of the convention was divided between 23 committees, each of which reported on a particular part of the proposed constitution. The work of the convention consisted primarily in making the new Constitution more specific and detailed. The opponents of the new Constitution described it as a code of law rather than a constitution.

The Bill of Rights

Probably the most conspicuous new clauses were those added to the Bill of Rights which provided that "no property qualification shall ever be re-

¹⁸⁷ Bancroft, XXIV, 373, 407.

quired for any person to vote or hold office" and that "the provisions of this Constitution are mandatory and prohibitory unless by express words they are declared to be otherwise."¹⁸⁸

The Legislative Department

The powers of the Legislature¹⁸⁹ were considerably restricted. Appropriations of money for the use of institutions not under the exclusive control of the State were forbidden, except for orphanages or homes for the indigent.¹⁹⁰

Special legislation was forbidden in a large number of cases, including the regulation of the duties of judicial officers, punishment of crimes and misdemeanors, regulating practice of courts of justice, providing for change of venue in civil and criminal actions, granting divorces, changing the names of persons or places, laying out streets, etc., summoning and impanelling grand and petty juries, regulating county and township business, election of township officers, and assessment or collection of taxes. Special legislation was also forbidden affecting estates, extending the time for the collection of taxes, giving effect to invalid debts, wills or other instruments, refunding money paid into the State Treasury, repudiating debts of any municipal corporation, declaring persons of age, legalizing except against the State any unauthorized act, granting any rights or privileges to corporations, exempting property from taxation, changing county seats, restoring citizenship, regulating interest rate on money, controlling liens, providing for the management of common schools, remitting fines, effecting fees or salaries of any officers, changing the law of descent, authorizing the adopting of children, limiting civil or criminal actions, and "all other cases where a general law can be made applicable."¹⁹¹

The Legislature was directed to pass laws to regulate or prohibit the sale of stock of corporations, by any exchange under the control of any association, and all sales of stock on a margin or for future delivery were declared void.¹⁹²

No appropriation or allotment of money might be made from any public source for the aid of any religious school or hospital.¹⁹³

The Legislature was prohibited from lending the credit of the State,¹⁹⁴ and no gifts of public money might be made.¹⁹⁵

The Legislature was directed to enact laws limiting the charges of telegraph and gas companies and the charges of storage, wharfage, etc.¹⁹⁶

¹⁸⁸ Article I, Secs. 22, 24.

¹⁸⁹ Article IV.

¹⁹⁰ Article IV, Sec. 22.

¹⁹¹ Article IV, Sec. 25.

¹⁹² Article XII, Sec. 26.

¹⁹³ Article IV, Sec. 30; Article IX, Sec. 8.

¹⁹⁴ Article IV, Sec. 33.

¹⁹⁵ Article IV, Sec. 26.

¹⁹⁶ Article IV, Sec. 33.

The Executive Department

There was but slight change made in the Executive Department. The term of office of the Governor had been increased in 1862 from two to four years. The Governor might veto a bill but each house by a two-thirds vote could pass a bill over his veto. The Governor might convene extra sessions of the Legislature, which should have no power to legislate except on the subjects named in the call.¹⁹⁷

The Governor was directed to report to the Legislature any and all pardons he had granted since the last session, and no person twice convicted of a felony might be pardoned except on the recommendation of a majority of judges of the Supreme Court.¹⁹⁸

The Judicial Department

The Judicial Department was completely reorganized.¹⁹⁹ The Supreme Court was to consist of a Chief Justice and six Associate Justices who might sit in two departments of three judges each.

The decision of each department was to be final except when a hearing in bank was granted. The Chief Justice was to apportion the business to the departments. The concurrence of four judges was necessary to a judgment in bank. All decisions of the Supreme Court were required to be in writing and the grounds for the decisions stated. Under the first Constitution decisions were not always made in writing.²⁰⁰

The Justices of the Supreme Court were to be elected in three separate classes and were to hold office for 12 years.²⁰¹

The county and district courts were to be replaced by superior courts.²⁰²

Corporations

Considerable attention was given to the "evils" of corporations and "monopolies." Corporations were to be formed only under general laws and each stockholder was to be individually liable for his proportion of all the debts of the corporation.²⁰³

The directors were liable to the creditors for all money embezzled or misappropriated.²⁰⁴

The Legislature could not grant a charter for banking purposes but banks might be formed under general laws.²⁰⁵

The State was specifically given a right to take property of individuals or corporations by eminent domain for public use.²⁰⁶

¹⁹⁷ Article VI, Sec. 9.

¹⁹⁸ Article VII.

¹⁹⁹ Article IV, Sec. 2.

²⁰⁰ *Heuston vs. Williams*, 13 Cal. 24.

²⁰¹ Article VI, Sec. 3.

²⁰² Article VI, Sec. 6.

²⁰³ Article XII, Secs. 1, 2.

²⁰⁴ Article XII, Sec. 3.

²⁰⁵ Article XII, Sec. 5.

²⁰⁶ Article XII, Sec. 8.

No corporation might engage in any business other than that authorized in its charter and no corporation might hold real estate not necessary to its business for more than five years.²⁰⁷

No corporation might issue stock or bonds except for actual payment in money, labor or property, and all fictitious increase of stock or indebtedness was void.²⁰⁸ Cumulative voting was authorized in corporations. Common carriers were made subject to legislative control. Transportation companies might not grant free passes to persons holding office, and the acceptance of such a pass by any public officer, except a railroad commissioner, caused the forfeiture of the office.²⁰⁹

Any common carrier which reduced its rates for the purpose of competition might not increase such rates until authorized.²¹⁰

The State was divided into three districts in each of which a railroad commissioner was to be elected. The duty of the railroad commissioner was to supervise and regulate the rates of transportation.²¹¹

Taxation

Mortgages, deeds of trust and any instruments by which debts were secured were subject to taxation as interests in such property, and property was declared to include "moneys, credits, bonds, stocks, dues, franchises, and all other matters and things, real and personal and mixed, capable of private ownership."²¹²

Special attention was given to making taxes on large amounts of property proportional to those upon smaller divisions.

Chinese

An entire article was devoted to the Chinese which provided that every means should be taken to prohibit their immigration, that they should not be employed by corporations or any public works, and that the Legislature should make necessary regulations for the protection of the state political subdivisions from the burdens arising from their presence.²¹³

Education

A new provision required that the state school money be used only for the common schools.²¹⁴ Examinations for teachers' certificates were to be conducted by local boards instead of by the state board. Sectarian doctrines were not to be taught in any of the public schools of the State.²¹⁵

²⁰⁷ Article XII, Sec. 9.

²⁰⁸ Article XII, Sec. 11.

²⁰⁹ Article XII, Sec. 19.

²¹⁰ Article XII, Sec. 20.

²¹¹ Article XII, Sec. 22.

²¹² Article XIII, Sec. 1.

²¹³ Article XIX.

²¹⁴ Article IX, Sec. 4.

²¹⁵ Article IX, Sec. 7.

Miscellaneous Provisions

Several restrictions were placed upon the organization of counties under general laws.²¹⁶ Provisions were made for granting charters to cities.²¹⁷ Amendments to the Constitution might be proposed by two-thirds of the members elected to each house of the Legislature.²¹⁸

The Constitution Adopted

The provisions of the Constitution regulating corporations and some of the provisions relating to cities and counties, particularly those relating to the granting of charters, caused considerable opposition to the proposed Constitution.

San Francisco, where the strongest demand for a new Constitution had been evident, rejected the new Constitution by a majority of 1,500 out of 38,000; but the Constitution was adopted by a majority of 10,000 out of a total State vote of 145,000 and went into effect for some purposes on July 4, 1879.²¹⁹

Some of the limitations that were incorporated to appease the radical members were so worded that they failed to accomplish the purposes intended or, as in the case of the provision prohibiting the employment of Chinese by corporations, were found to be in conflict with the Federal Constitution and treaties.

Amendments

The large amount of legislation contained in the Constitution has necessitated frequent change. From 1880 to 1940 inclusive, there were amendments proposed to 733 sections of the Constitution, of which 343 were adopted and 390 rejected. Among the more important amendments adopted were those providing for the initiative and referendum,²²⁰ and recall,²²¹ the executive budget,²²² the district courts of appeal,²²³ municipal courts,²²⁴ absent voting,²²⁵ increasing the powers of the Railroad Commission,²²⁶ establishing the Judicial Council,²²⁷ regulating the sale of liquor,²²⁸ and establishing a state civil service system.²²⁹

²¹⁶ Article XI.

²¹⁷ Article XI, Sec. 8.

²¹⁸ Article XVIII.

²¹⁹ Bancroft XXIV, 400; Article XXII, Sec. 12.

²²⁰ Article IV, Sec. 1.

²²¹ Article XXIII.

²²² Article IV, Sec. 34.

²²³ Article VI, Sec. 4.

²²⁴ Article VI, Sec. 11.

²²⁵ Article II, Sec. 1.

²²⁶ Article XII, Secs. 22, 23, 23a.

²²⁷ Article VI, Sec. 1a.

²²⁸ Article XX, Sec. 22.

²²⁹ Article XXIV.

Proposed Constitutional Convention

During recent years there has been considerable discussion of the advisability of calling a constitutional convention. In 1933 the Legislature submitted the question of calling a constitutional convention to the voters.²³⁰ This proposal received a vote of 705,915 for to 668,080 against. When the Legislature undertook to make provision for the convention it was noticed that the proposition approved by the people had provided that the convention must meet within three months of the election calling it. The election having been November 6, 1934, the three months would expire February 6, 1935. The Legislature met on January 7, 1935, and it was impossible for the Legislature to pass the necessary legislation to provide for the convention for the election to be called, the results canvassed and the delegates to meet within 29 days. It was argued by some that the provision concerning time was only directory and that the convention should be called at a later date. Other defects in the proposal were pointed out; the cost of the special elections were considered. The Legislature finally took no action.

Revision of the Constitution

At every session of the Legislature, from 1935 to 1947, there were proposals for a Constitutional convention and for revision of the Constitution. The proposals were given thorough consideration but none of them passed. Finally, in 1947, Assembly Concurrent Resolution No. 89 was proposed for the purpose of setting up a joint committee for making recommendations concerning constitutional revision. This resolution passed and the joint committee consisting of 10 members from each house was appointed. A large and representative advisory committee was selected and a competent staff was secured.

The resolution directed the committee to study the Constitution of California and those of other states and to prepare a draft of a revised Constitution appropriate for use in case revision of the Constitution as a whole was effected and a series of drafts of the several parts of the Constitution appropriate for use in case needed changes were effected by amendment instead of by way of revision.

A study of the problems of revision indicated that a complete revision of the Constitution rather than the submission of individual amendments would be more feasible. An amendment was prepared to Article XVIII of the Constitution authorizing the Legislature to submit a revision of the Constitution to the electors, but this proposal was not submitted.

Very little was accomplished because the advisory committee recommended that the committee restrict itself to the elimination of obsolete provisions in the Constitution rather than a revision in substance and that recommendation was accepted by the committee. A series of seven Con-

²³⁰ Assembly Concurrent Resolution No. 17.

stitutional amendments were submitted by the Legislature to the voters for the purpose of eliminating purely obsolete material from the Constitution. After submission it was discovered that one of these proposals might contain defects in drafting. At the special election November 8, 1949, the voters adopted six of these proposals thereby eliminating the more obviously obsolete proposals of the Constitution. These amendments on the whole eliminated approximately 14,500 words from the Constitution.

The California Constitution
Revision Commission

The California Constitution Revision Commission

BY HON. BRUCE W. SUMNER*

History of the Commission

In 1962, the voters of California approved a proposition submitted to them by the Legislature which launched a vast project to modernize and update the state's antiquated Constitution through the creation of the California Constitution Revision Commission.

Until 1962, the only certain way to revise the California Constitution was by a constitutional convention. While Article XVIII, Section 1, provided for amendments to be proposed by the Legislature it was generally felt that judicial construction of the term "amendment" might preclude overall constitutional revision.¹

Following the 1949 Special Election at which much obsolete language was deleted from the Constitution by amendments, proposals for revision were considered at nearly every session of the Legislature. As legislators and other interested citizens became increasingly concerned about the length and content of the State Constitution, general support for complete revision was evident.

In 1959, the Assembly of the California Legislature adopted a resolution directing the Citizens' Legislative Advisory Commission to study the legislative techniques and procedures which should be used to secure a revision of the State Constitution.² A preliminary report of the commission's findings was submitted to the Legislature in April, 1960, in which the commission stated that the State Constitution was in need of fundamental review.³ The commission's final report recommended that Article XVIII be amended to permit the Legislature to submit to the people a revised constitution, or a revision of any part, and that a commission be established by statute to study the Constitution and make recommendations for a total or partial revision.⁴

Concurrently with the citizen's commission study, the Assembly Interim Committee on Constitutional Amendments undertook an examination of the need for constitutional reform. In its 1960 report to the Legislature, the committee stated that the California Constitution was in need of fundamental revision in both substance and form.⁵ The committee also

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¹ *McFadden v. Jordan*, 32 Cal. 2d 330, 196 P.2d 787, *cert. denied*, 336 U.S. 918 (1948); *Livermore v. Waite*, 102 Cal. 113, 36 Pac. 424 (1894).

² Assembly House Resolution No. 278, Stats. 1959 Regular Session.

³ Citizens' Legislative Advisory Commission, *Second Progress Report to the Citizens of California*, September, 1960.

⁴ Citizens' Legislative Advisory Commission, *Final Report to the California Legislature and to the Citizens of California*, March, 1962.

⁵ *Report of the Assembly Interim Committee on Constitutional Amendments to the California Legislature*, November, 1960.

recommended that Article XVIII be amended to authorize the Legislature to submit an entire revision to the people.⁶

Acting on these recommendations the Legislature in 1961 adopted Assembly Constitutional Amendment No. 14 by Assemblyman Busterud.⁷ The measure proposed an amendment to Article XVIII to authorize the Legislature to act, in effect, as a constitutional convention by allowing it to submit proposals for revision of the Constitution to the voters. The amendment was placed on the November, 1962 ballot as Proposition 7 and was approved by the voters by a margin of more than 2 to 1.⁸

To implement Proposition 7, the Legislature in 1963 adopted resolutions which called for the creation of a Constitutional Revision Commission, under the auspices of the Joint Committee on Legislative Organization, to provide the Legislature and the joint committee "with facts and recommendations relating to the revision of the Constitution of the State of California."⁹

By the terms of the implementing resolutions, the commission was to be composed of not less than 25 nor more than 50 citizen members, appointed by the Joint Committee on Legislative Organization, and six legislative members. In addition, the members of the joint committee were named as ex officio members of the commission. The resolutions provided that "The Commission membership shall be broadly representative of the various political, economic and social groupings within the State."¹⁰

This initial legislation provided that "The existence of the Commission shall terminate 90 days after the termination of the 1965 Regular Session of the Legislature."¹¹ During the 1965 Regular Session, the Legislature extended the life of the commission to October 1, 1966, and increased the maximum number of citizen members to 60.¹²

Subsequent legislation has renamed the commission The Constitution Revision Commission and continued its existence for an indefinite period.¹³

Under these resolutions, the commission selects its own chairman, adopts its own rules of procedure and reports its findings to the Legislature. Members of the commission "serve without compensation but each member is allowed actual expenses incurred in the discharge of his duties,

⁶ *Ibid.*

⁷ Assembly Constitutional Amendment No. 14, ch. 222, Stats. 1961 Regular Session.

⁸ 2,901,537–1,428,034. Secretary of State, *Statement of the Vote*, General Election, 1962.

⁹ Assembly Concurrent Resolution No. 77, ch. 181, Stats. 1963 Regular Session; Assembly Concurrent Resolution No. 7, ch. 7, Stats. 1963 First Extraordinary Session.

¹⁰ Assembly Concurrent Resolution No. 7, ch. 7, Stats. 1963 First Extraordinary Session.

¹¹ *Ibid.*

¹² Assembly Concurrent Resolution No. 130, ch. 179, Stats. 1965 Regular Session.

¹³ Assembly Concurrent Resolution No. 144, ch. 212, Stats. 1965 Regular Session; Senate Concurrent Resolution No. 6, ch. 74, Stats. 1966 First Extraordinary Session; Assembly Concurrent Resolution No. 107, ch. 163, Stats. 1967 Regular Session; Assembly Concurrent Resolution No. 102, ch. 202, Stats. 1968 Regular Session.

including travel expenses." All necessary staff and materials are provided by the Joint Committee on Legislative Organization.¹⁴

When it first met on February 20, 1964, the commission consisted of 43 citizen members. At the first session the commission elected the late James C. Sheppard of Los Angeles and Robert Gordon Sproul of Berkeley, co-chairman, Mrs. Robert Zurbach of Pasadena, secretary, and Paul Mason of Sacramento, parliamentarian. On July 31, 1964, Burnham Enersen of San Francisco was elected vice chairman of the commission. With the passing of James C. Sheppard the commission on November 4, 1964, elected Judge Bruce W. Sumner of Laguna Beach, cochairman. On November 18, 1965, Robert Gordon Sproul resigned as cochairman and Judge Sumner was elected chairman.

The revision commission has organized its study of the Constitution on an article by article basis. Usually meeting monthly for two or three day public sessions, the commission chairman determines which articles will be considered and may name a committee of the commission to study an article in depth. Committees report their recommendations to the full commission for consideration. Before an article is considered by a committee, or the commission, a background study is prepared by the commission staff or by a special consultant under staff supervision. The study includes an analysis of the provisions of the article being considered, relevant sections of other articles, relevant constitutional provisions in other state constitutions and other source material. After studying an article in detail the commission adopts its recommendations for revision of both the substance and language of the article.

Revision Phase I

On February 22, 1966, the commission, in an historic session in Sacramento, made its initial report to the Legislature. It contained recommended revisions of Articles III, IV, V, VI, VII, VIII, and XXIV of the Constitution, which deal with the legislative, executive and judicial branches of government and the civil service system. These articles comprised approximately one-third of the Constitution.

Since 1966 was a budget session there was a question whether the Legislature would be permitted, at that time, to consider the recommendations of the commission. The question was resolved when Governor Edmund G. Brown placed constitution revision on special call and the commission's proposals were submitted to the Legislature in the form of Assembly Constitutional Amendment No. 13 by Assemblyman James Mills of San Diego, Chairman of the Joint Committee on Legislative Organization.¹⁵ A companion measure, Assembly Bill No. 147 by Assemblymen Mills and

¹⁴ Assembly Concurrent Resolution No. 7, *supra* note 11.

¹⁵ *Governor's Proclamations Nos. 54, 55, 56*, Stats., 1966 First Extraordinary Session, pp. 250, 251; Assembly Constitutional Amendment No. 13, ch. 139, Stats., 1966 First Extraordinary Session.

Elliott, contained the nonfundamental matters which were to be deleted from the Constitution by the revision and converted to statutes.¹⁶

Strong bipartisan support represented by Assembly Speaker Jesse M. Unruh and Assembly Minority Leader Robert T. Monagan, together with the inherent strength of the commission through its many prominent and politically active members, gave the commission's proposals ready support in the Assembly. However, because the State Senate in 1966 was meeting in an historic last session under court-voided apportionment laws, there was some question whether passage could be obtained through that house. Bipartisan support and active commission endorsement also produced Senate approval of the recommendations which were placed on the November 8, 1966, ballot as Proposition 1-A.

The momentum obtained by the passage of the measure through both houses by the necessary two-thirds vote, along with unanimous commission endorsement, caused the campaign for voter adoption of the revision to proceed virtually without opposition. Both Governor Brown and Ronald Reagan, then candidate for Governor, endorsed Proposition 1-A and appeared on television in support of its passage. The result was approval by the people by a vote of 4,156,416 to 1,499,675, a 73.7 percent "Yes" vote.¹⁷

The 1966 revision in addition to deleting approximately 16,000 words effected the following basic changes and redrafted the articles involved so that the citizens of California could read and understand them.

Article III—Separation of Powers

The 1966 revision retained, with only changes in wording, the concept that our legislative, executive and judicial branches of government must be separate. The article was rephrased to state its meaning concisely and accurately.

Article IV—Legislative

This article effected a number of important substantive changes relative to the legislative branch.

Under the former Constitution the Legislature met in general session only during odd-numbered years. In even-numbered years the Legislature met in budget session. The 1966 revision eliminated the restricted budget session and provided for annual general sessions.

Regular sessions of the Legislature formerly could not exceed 120 days, excluding Saturdays and Sundays. Experience showed this to be, in effect, a minimum as well as a maximum period. The limitation on the length of the regular session was removed.

Legislative compensation was formerly set at \$500 a month, and any adjustment required a constitutional amendment. Subject to a two-thirds vote

¹⁶ Assembly Bill No. 147, ch. 161, Stats. 1966 First Extraordinary Session.

¹⁷ Secretary of State, *Statement of Vote*, General Election, 1966.

of each house, the Governor's veto, and the initiative and referendum. the Legislature, under the 1966 revision, was permitted to set its own compensation by statute. Increases of more than 5 percent per year cannot be passed, however, and any compensation adjustment adopted in one session may not take effect until after the next general election. Thus, before an increase in compensation can be realized, the action of the legislators may be reviewed by the people at the polls.

No mention was made of conflict of interest in the former Constitution. Under the 1966 revision the Senate and Assembly were mandated to pass conflict-of-interest statutes. In anticipation of the passage of Proposition 1-A, the 1966 Legislature passed a conflict-of-interest law. Under the law, restrictions were imposed on legislators' expense and retirement benefits, travel expense reimbursement was limited to the fare of common carriers, and control over per diem determinations given to the Board of Control.¹⁸

California's two basic initiative provisions are the initiative statute and the initiative constitutional amendment. The initiative statute enacts or amends statutes; the initiative constitutional amendment enacts or amends a provision of the Constitution. Each type of initiative is commenced by filing a petition signed by a number of voters equal to 8 percent of the votes cast at the last election for Governor. Each type of initiative must be approved by a majority of the voters.

The 1966 revision reduced the signature requirement for initiative statute petitions from 8 to 5 percent, but retained the 8 percent signature requirement for constitutional amendments. This was done to encourage persons wishing to sponsor initiative petitions to use the initiative statute, thus protecting the Constitution from addition of unnecessary detail.

The former Constitution contained a provision for an indirect initiative. Like that for the initiative statute, the procedure prescribed began with a petition to enact or change a statute. The petition was signed by a number of voters equal to 5 percent of the votes cast at the last election for Governor. The indirect initiative and initiative statute differed, however, in that the former was directed to the Legislature rather than to the people for a vote. If the Legislature approved the proposed statute, it became law. If it did not approve, the proposed statute was submitted to the people for their approval or rejection.

As noted above, the 1966 revision reduced the signatures required for an initiative statute from 8 to 5 percent, the same as required for the indirect initiative. With the same signature requirement, the indirect initiative merely added an additional step to accomplish the result which could be realized under the direct initiative. Moreover, the indirect initiative had been used only four times, and only once successfully. For these reasons

¹⁸ Assembly Bill No. 173, ch. 163, Stats. 1966 First Extraordinary Session.

the 1966 revision deleted the indirect initiative as unnecessary. This, however, did not impair the right of the people to propose laws through the initiative procedure.

Article V—Executive

Article V (Executive Powers), Article VII (Pardoning Power), and Article VIII (Militia) were all separate articles in the former Constitution.

The 1966 revision combined these articles into revised Article V. This placed all the primary duties of the executive branch in one article.

Reorganization of the executive branch was not specifically mentioned in the former Constitution. The 1966 revision authorized the Legislature to allow the Governor to reorganize the executive branch of government which furnishes the Governor more direct control over his own area of responsibility.

The former Constitution contained a detailed order of succession to the offices of Governor and Lieutenant Governor. The 1966 revision deleted this list and provided that successors to the Governor, after the Lieutenant Governor, were to be designated by statute. The result simplified constitutional language.

The 1966 revision added a new provision authorizing the California Supreme Court to determine when the Governor is unable to carry out his duties and should be removed from office. Authority to raise questions regarding the Governor's ability to perform his duties was vested in a special body to be created by statute.¹⁹

The former Constitution provided that money could not be spent by the state unless first authorized by the Legislature. This principle of fiscal management is followed in other states and by the federal government. An unused exception in the former Constitution, however, allowed the Governor and the Controller to bypass the Legislature and give money to the Attorney General without legislative appropriation. The 1966 revision deleted this special funding provision and required the Attorney General to receive legislative approval for his funds, as do all other state officers and agencies.

The Attorney General's salary was fixed by the former Constitution at the amount paid to an Associate Justice of the State Supreme Court. The 1966 revision also deleted this provision, so that the Attorney General's salary, like those of all other elected state officers, could be determined by the Legislature.

Article VI—Judicial

Relatively few substantive changes were proposed in the operation of the judicial branch, since California's system is envied by most of the nation.

¹⁹ Assembly Bill No. 164, ch. 162, Stats. 1966 First Extraordinary Session.

The former Constitution provided for Supreme Court operation in two separate departments to relieve heavy caseloads. With the creation of District Courts of Appeal in 1904, the department system became obsolete and never was used again. The 1966 revision recognized this fact and deleted this obsolete provision.

The 1966 revision continued the requirement of a superior court in each county, but deleted the requirement of at least one judge in each county and instead permitted the Legislature to provide that one or more superior court judges be selected to serve more than one county. Concurrence of the boards of supervisors of the affected counties was required for adoption of the system. The change provides financial savings to small counties that do not need the full-time services of a superior court judge and which prefer to share a judge with other counties.

Under the former Constitution an appeal from a superior court, in many cases, went directly to the State Supreme Court. The Supreme Court normally transferred these cases for hearing to the intermediate appellate court. The 1966 revision adhered to orderly appellate procedure by requiring appeals to be taken from a superior court to a court of appeals before the case could proceed to the Supreme Court. An exception was made for unique cases in that the Supreme Court can always order a matter transferred to it from a court of appeals. Cases imposing the death sentence were excepted and still are appealable directly from a superior court to the Supreme Court.

Five years admission to practice law in this state was required by the former Constitution for eligibility to a judgeship in any court of record. To encourage placement of experienced men as judges, the 1966 revision increased the admission requirement to 10 years for future judges of the superior and appellate courts.

The former Constitution provided that the names of incumbent judges of the superior court in counties of 700,000 population or more need not appear on the election ballot if no one ran against them or petitioned to have the name appear. This system met with widespread approval and the 1966 revision allowed the Legislature to extend it to any trial court in the state without regard to population.

The election or appointment of superior and municipal court judges to nonjudicial office during their terms was permitted under the former Constitution. Acceptance of the new position, however, constituted a resignation from their judicial office. The 1966 revision recognized that judges should be, as far as possible, removed from politics. Accordingly, it prohibited appointment of any judge to nonjudicial office during his judicial term and it required a judge of a municipal or superior court to take a leave of absence without pay before running for nonjudicial office. The prohibition against appellate judges running for other than judicial office during their terms was retained.

Under the former Constitution a judge was suspended from office without pay after conviction for a crime involving moral turpitude. The 1966 revision provided for suspension when a judge is convicted of any felony, as well as a crime involving moral turpitude. In addition, a provision was added providing that a judge charged with a serious crime is disqualified, without loss of pay, from sitting on the bench until he is cleared of the charge.

Revision Phase II

Even before the voters had accepted Proposition 1-A, work on the second phase of constitutional revision had begun. This phase, which became Proposition I on the November, 1968 General Election ballot, presented to the voters a proposed revision of Articles: IX (Education), X (State Institutions), XI (Local Government), XII (Corporations and Public Utilities), XVII (Land, and Homestead Exemption), XVIII (Amending and Revising the Constitution) and XXIV (State Civil Service).

After two years of deliberations and public meetings held throughout California, the revision commission submitted its second phase recommendations to the Legislature on February 28, 1968.²⁰ The recommendations were introduced in the Assembly in the form of Assembly Constitutional Amendment No. 30 by Assemblyman Joe Gonsalves, Chairman of the Joint Committee on Legislative Organization.²¹

There followed extensive public hearings in both the Assembly and the Senate. These hearings were announced publicly by the Legislature and were preceded by written notices to interested persons and groups throughout the state.

In July of 1968, Proposition I passed both houses of the Legislature by the required two-thirds vote. Before the measure could be presented to the voters, however, it was necessary that Governor Reagan approve and sign a companion measure, Assembly Bill No. 918, also by Assemblyman Gonsalves, which contained deleted constitutional material recommended for enactment into statutory law.²² The bill was signed thereby allowing Proposition I to appear on the November ballot and insuring that, on adoption by the people, the provisions transferred from the Constitution to the statutes would become effective immediately.

In spite of strong legislative support and the endorsement of Proposition I by such groups as the California League of Cities, County Supervisors' Association, and the State Chamber of Commerce, Proposition I failed to attain the necessary majority vote for its adoption.²³

²⁰ *Report of the California Constitution Revision Commission*, v.II, February, 1968.

²¹ Assembly Constitutional Amendment No. 30, ch. 184, Stats. 1968 Regular Session.

²² Assembly Bill No. 918, ch. 767, Stats. 1968 Regular Session.

²³ 2,562,378–3,406,029, Secretary of State, *Statement of the Vote*, General Election, 1968.

A brief description of the changes which would have been effected if the second phase proposal had been approved follows:

Article IX—Education

The revised article would simply state "the Legislature shall provide for and support a free public school system." This is a mandate to the Legislature and a concise declaration of what shall be done as a minimum in the field of education. A similar mandate is contained in the existing Constitution.

The amended version would require that the Legislature grant basic financial aid to school districts and mandate the Legislature to create intermediate and local school districts. The general requirement that the Legislature provide financial aid would be a change from specific dollar amounts in the existing Constitution, which have been exceeded by statutory provisions.

The revised article would also provide that school districts shall have an executive officer appointed by an elected board, and that at the county or intermediate unit level there shall continue to be elected school boards and elected superintendents, unless the Legislature, by enactment of a statute passed by a two-thirds vote of the members of each house, provides for a different method of selection. This would mean no change in the present method of selecting county superintendents of schools in general law counties. Charter counties and cities now have and would continue to have autonomy in this area.

The revision would make no change in the present provisions concerning the State Board of Education. The amendment states that the State Superintendent of Public Instruction would continue to be elected by the people, unless the Legislature, by enactment of a statute passed by a two-thirds vote of all the members elected to each house, provides for a different method of selection. It is well to note that such a statute would be subject to veto by the Governor and the people's right of referendum.

The revision proposal provides that the State Board of Education shall continue to adopt and furnish textbooks at state expense for use in the elementary schools throughout the state.

The proposed article would continue the present constitutional mandate for a minimum annual salary for teachers. As in the case of financial aid to school districts, the specific dollar amount would be deleted, however, a general mandate to the Legislature would be retained.

The sections of existing Article IX dealing with higher education would not have been altered by Proposition I. Recommendations concerning these sections will be submitted to the Legislature in 1970.

The existing sections dealing with the financial aspects of education, other than basic financing, would be transferred to Article XIII (Revenue and Taxation) with no change in their text.

Article X—State Institutions

The first two paragraphs of existing Article X would be deleted from the Constitution as unnecessary statements of power clearly inherent in the Legislature. The third paragraph dealing with the use of convict labor would be transferred without change to Article XX (Miscellaneous) for future consideration by the revision commission and the Legislature.

Article XI—Local Government

This article has been described as one of the two most amended articles in the California Constitution. By itself, it is as long as the entire United States Constitution, and it contains much material which the commission and the Legislature found to be statutory in nature.

The revised article would continue to provide for counties as legal subdivisions of the state and would guarantee an elected governing body. The present Constitution does not mandate that the governing body of counties be elected. Existing provisions governing the formation of cities would not be substantively altered.

The revision proposal would continue to provide for the adoption by cities and counties of governing charters. The extensive procedural provisions covering this process in the existing Constitution would be reenacted as statutes. Existing provisions governing the powers of chartered cities would be retained.

The minimum number of members of the local governing body of charter counties would be increased from three to five, recognizing that no charter county at present has fewer than five members.

Consolidation of cities and counties would be authorized under the revised provisions, as provided by statute, subject to the condition that all cities within the county be included and that the consolidated city and county have a charter.

The police powers of local governments would be preserved without change. In addition there would be no change in the existing constitutional provisions which allow the Legislature to provide that counties may perform municipal functions at the request of cities within them, and if provided by their respective charters, a county may agree with the city within it to assume and discharge specific municipal functions. The existing constitutional provisions concerning public works would also be retained.

A prohibition on local government bodies from granting extra compensation or extra allowance to a public officer, employee, or contractor, after service has been rendered, or to pay a claim without authority of law would be added. There is a similar prohibition in the existing Constitution on the Legislature.

The existing provisions prohibiting delegation by the Legislature of certain powers over local matters and allowing the Legislature to prescribe a

procedure for the presentation of claims against the local government and its agents and employees would be retained with minor changes.

Article XII—Corporations and Public Utilities

The first 16 sections of existing Article XII, with two exceptions, would be deleted by the revision proposal since they concern corporation matters which are extensively dealt with by statute. It was unanimously acknowledged that these provisions are inappropriate in the State Constitution and can better be dealt with by statute. Existing Section I, which authorizes the Legislature to amend or repeal laws concerning corporations would be retained and transferred to Article XX (Miscellaneous) and existing Section 13 dealing with the extension of credit by the state and other financial matters would be retained and transferred to Article XIII (Revenue and Taxation) for future consideration by the commission and the Legislature.

The balance of existing Article XII concerns the Public Utilities Commission. The revision would continue the constitutional status of the commission with five or more members and would classify certain activities and entities as public utilities without changing the substance of existing provisions.

The jurisdiction of the Public Utilities Commission would be defined more specifically than the present Constitution and in accordance with existing law and practice.

Under the proposed revision the Legislature would be authorized to provide, on request of a condemnor and condemnee, that the Public Utilities Commission may fix the just compensation for public utility property taken by eminent domain. Present law restricts this option to the condemning authority.

Article XVII—Land, and the Homestead Exemption

The first provision of existing Article XVII, is a statement of policy requiring the Legislature to provide for homestead protection. This policy declaration is not self-executing, is unenforceable, and has been exceeded in scope by current statutes. To provide for homestead protection is clearly within the inherent power of the Legislature.

The second provision of the existing article declares that it is against the public interest for individuals or corporations to hold uncultivated and unimproved tracts of land. In light of the adoption in 1966, of Article XXVIII declaring it to be in the best interest of the state to maintain open space land, this 1879 provision appears contrary to current public policy. The revision proposal would delete these two sections of Article XVII entirely.

A third section in existing Article XVII provides for a system of granting state lands to settlers. This provision would be transferred to the statutes.

Article XVIII—Amending and Revising the Constitution

Revised Article XVIII would continue to provide for legislatively proposed amendments and revisions. It contains a substantive change which will allow the Legislature, after an amendment or revision has passed both houses, to amend or withdraw the measure by the two-thirds vote required to pass it. This will allow necessary changes in proposed amendments before they are submitted to the people where changes are agreed to by two-thirds vote of each house. Initiative constitutional amendments would not be affected by this provision.

The revised article would continue the requirement that the Legislature provide for a constitutional convention when approved by the electors. A provision would be added requiring that constitutional convention delegates must be voters elected from districts of substantially equal population.

There is no existing provision in Article XVIII providing that the people may amend the Constitution by Initiative. However, detailed provisions governing initiative amendments are found in Article IV. Reference to amending the Constitution by initiative would be placed in Article XVIII as well to assure the article mentions all methods for changing the Constitution.

A further provision would be added stating that all amendments to the Constitution would take effect the day after election unless the measure otherwise provides. Under existing law, amendments to the Constitution proposed by the Legislature take effect on election day, and initiative constitutional amendments take effect five days after the date of the official declaration of vote by the Secretary of State. The Legislature and the commission have agreed that the effective date of amendments to the Constitution should be the same whether proposed by the Legislature or by the people directly.

Article XXIV—State Civil Service

This article was the subject of recommended revisions submitted to the Legislature in 1966. Because it was not placed on a special call by the Governor, it was not considered by the Legislature or the people with the rest of the first phase revisions. The Legislature included the recommended revisions of Article XXIV in the 1968 revision proposal.

The revised article would substantially retain the existing provisions concerning the state civil service system. It would continue to provide for a five member State Personnel Board, appointed by the Governor and approved by the Senate for 10 year terms, for selection and promotion of state employees by competitive examination, and for exemptions from civil service. The existing exemptions would be augmented by the employees of the Lieutenant Governor. Additional exempt positions in the office of Legislative Counsel would also be authorized. The revised article

would add a provision requiring the State Personnel Board to include within the state civil service system employees of a county, city, district, department or agency where the functions of the local or federal agency have been assumed by the state.

Conclusion

Proposition I dealt with more than fourteen thousand words in the existing Constitution and would have reduced the verbiage in the articles affected to approximately nineteen hundred carefully chosen words. In general, its effect would have been to strengthen local government, lend clarity to existing provisions, and provide flexibility in our state system.

The Constitution Revision Commission is continuing its work. The members of the commission are striving to complete their recommendations for Constitutional Revision in time for submission to the Legislature at the 1970 session. The members have donated five years and thousands of hours in making their recommendations to the Legislature. They do so as volunteer citizens who believe that state and local government must have an efficient and concise statement of constitutional power under which to work if these vital governmental entities are to continue to play an important role in our way of life. Whether the people adopt or reject these final recommendations or those previously submitted in Proposition I, an important chapter in the history of California's Constitution has been written.

Constitution of the State
of California
1879

**CONSTITUTIONAL AMENDMENTS
APPROVED AT STATEWIDE ELECTIONS
MAY 2009–NOVEMBER 2010**

<i>Sub-division</i>	<i>Affected By</i>			<i>Year</i>	<i>Sub-division</i>	<i>Affected By</i>			<i>Year</i>
	<i>Election</i>	<i>Prop.</i>	<i>Effect</i>	<i>Res. Ch.</i>		<i>Election</i>	<i>Prop.</i>	<i>Effect</i>	<i>Res. Ch.</i>
Art. II					Art. XIX				
Sec. 5	6-8-10	14	Am	09:2	Sec. 1	11-2-10	22	Am&RN	Initiative
(a)	6-8-10	14	Am	09:2	(a)	11-2-10	22	Am&RN	& Ad
(b)	6-8-10	14	Am	09:2	(b)	11-2-10	22	Am&RN	Initiative
(c)	6-8-10	14	Ad	09:2				Am&RN	Initiative
(d)	6-8-10	14	Ad	09:2	Sec. 2	11-2-10	22	Am&RN	Initiative
Sec. 6	6-8-10	14	Am	09:2				Am&RN	&
(a)	6-8-10	14	Am	09:2				Ad(RN)	
(b)	6-8-10	14	Am	09:2	(a)	11-2-10	22	Am&RN	Initiative
								Am&RN	&
								Ad(RN)	
Art. III									
Sec. 8	5-19-09	1F	Am	09:3					
(g)	5-19-09	1F	Am	09:3					
(h)	5-19-09	1F	Am	09:3					
Art. IV					Sec. 3	11-2-10	22	Am&RN	Initiative
Sec. 12	11-2-10	25	Am	Initiative				Am&RN	&
(d)	11-2-10	25	Am	Initiative				Ad(RN)	
(e)	11-2-10	25	Am	Initiative	(a)	11-2-10	22	Ad(RN)	Initiative
(f)	11-2-10	25	Am	Initiative	(b)	11-2-10	22	Ad(RN)	Initiative
(g)	11-2-10	25	Ad	Initiative					
(h)	11-2-10	25	Ad	Initiative					
					Sec. 4	11-2-10	22	Am&RN	Initiative
								Am&RN	&
								Ad(RN)	
Art. XIII									
Sec. 24	11-2-10	22	Am	Initiative					
(a)	11-2-10	22	Ad	Initiative					
(b)	11-2-10	22	Ad	Initiative					
(c)	11-2-10	22	Ad	Initiative					
(d)	11-2-10	22	Ad	Initiative					
Sec. 25.5	11-2-10	22	Am	Initiative					
(a)	11-2-10	22	Am	Initiative					
(b)	11-2-10	22	Am	Initiative					
					Sec. 5	11-2-10	22	Am&RN	Initiative
								Am&RN	&
								Ad(RN)	
Art. XIII A									
Sec. 2					Sec. 6	11-2-10	22	R & Ad(RN)	Initiative
(a)	6-8-10	13	Am	08:115				R & Ad(RN)	
(c)	6-8-10	13	Am	08:115				Ad(RN)	Initiative
(d)	6-8-10	13	Am	08:115					
(e)	6-8-10	13	Am	08:115					
(h)	6-8-10	13	Am	08:115					
(i)	6-8-10	13	Am	08:115					
(j)	6-8-10	13	Am	08:115					
					Sec. 7	11-2-10	22	Am&RN	Initiative
								Am&RN	&
								Ad(RN)	
Sec. 3	11-2-10	26	Am	Initiative					
(a)	11-2-10	26	Ad	Initiative					
(b)	11-2-10	26	Ad	Initiative					
(c)	11-2-10	26	Ad	Initiative					
(d)	11-2-10	26	Ad	Initiative					
					Sec. 8	11-2-10	22	Am&RN	Initiative
								Am&RN	&
								Ad(RN)	
Art. XIII C									
Sec. 1	11-2-10	26	Am	Initiative					
(e)	11-2-10	26	Ad	Initiative					
					Sec. 9	11-2-10	22	Am&RN	Initiative
								Am&RN	&
								Ad(RN)	
					Sec. 10	11-2-10	22	Ad(RN)	Initiative

**CONSTITUTIONAL AMENDMENTS
APPROVED AT STATEWIDE ELECTIONS
MAY 2009–NOVEMBER 2010—CONTINUED**

<i>Sub-division</i>	<i>Affected By</i>			<i>Year</i>	<i>Sub-division</i>	<i>Affected By</i>			<i>Year</i>
	<i>Election</i>	<i>Prop.</i>	<i>Effect</i>	<i>Res. Ch.</i>		<i>Election</i>	<i>Prop.</i>	<i>Effect</i>	<i>Res. Ch.</i>
Art. XIX A					Art. XIX C				
Sec. 1	11-2-10	22	Am	Initiative	heading	11-2-10	22	Ad	Initiative
(a)	11-2-10	22	Am	Initiative	Sec. 1	11-2-10	22	Ad	Initiative
(b)	11-2-10	22	Am	Initiative	Sec. 2	11-2-10	22	Ad	Initiative
(c)	11-2-10	22	Ad	Initiative	Sec. 3	11-2-10	22	Ad	Initiative
(d)	11-2-10	22	Ad	Initiative	Sec. 4	11-2-10	22	Ad	Initiative
(e)	11-2-10	22	Ad	Initiative					
(f)	11-2-10	22	Ad	Initiative					
Sec. 2	11-2-10	22	Am	Initiative					
(b)	11-2-10	22	Am	Initiative	Art. XXI				
(d)	11-2-10	22	Am	Initiative	Sec. 1	11-2-10	20	Am	Initiative
(e)	11-2-10	22	Ad	Initiative	(a)	11-2-10	20	Am	Initiative
(f)	11-2-10	22	Ad	Initiative	(b)	11-2-10	20	Am	Initiative
					(c)	11-2-10	20	Am	Initiative
					(d)	11-2-10	20	Am	Initiative
Art. XIX B									
Sec. 1	11-2-10	22	Am&RN	Initiative & Ad	Sec. 2	11-2-10	20	Am	Initiative
(a)	11-2-10	22	Am&RN	Initiative	(a)	11-2-10	20	Am	Initiative
(b)	11-2-10	22	Am&RN	Initiative	(b)	11-2-10	20	Am	Initiative
(c)	11-2-10	22	Am&RN	Initiative	(c)	11-2-10	20	Am	Initiative
(d)	11-2-10	22	Am&RN	Initiative	(d)	11-2-10	20	Am	Initiative
(e)	11-2-10	22	Am&RN	Initiative	(f)	11-2-10	20	Am	Initiative
(f)	11-2-10	22	Am&RN	Initiative	(g)	11-2-10	20	Am	Initiative
					(h)	11-2-10	20	Am	Initiative
Sec. 2	11-2-10	22	Ad(RN)	Initiative	(j)	11-2-10	20	Am	Initiative
(a)	11-2-10	22	Ad(RN)	Initiative					
(b)	11-2-10	22	Ad(RN)	Initiative	Sec. 3	11-2-10	20	Am	Initiative
(c)	11-2-10	22	Ad(RN)	Initiative	(b)	11-2-10	20	Am	Initiative
(d)	11-2-10	22	Ad(RN)	Initiative					
(e)	11-2-10	22	Ad(RN)	Initiative					
(f)	11-2-10	22	Ad(RN)	Initiative					
(g)	11-2-10	22	Ad	Initiative					
(h)	11-2-10	22	Ad	Initiative					

Abbreviations

Ad = Added
 Ad(RN) = Added by Renumbering
 Am = Amended
 Art. = Article
 R = Repealed
 Am & RN = Amended and Renumbered
 Sec. = Section

TABLE OF CONTENTS

<i>Article</i>	<i>Title</i>	<i>Page</i>
	Preamble.....	153
I.	Declaration of Rights.....	153
II.	Voting, Initiative and Referendum, and Recall.....	168
III.	State of California	174
IV.	Legislative	179
V.	Executive	194
VI.	Judicial	199
VII.	Public Officers and Employees	211
VIII.	(Repealed November 8, 1966).....	213
IX.	Education.....	213
X.	Water	222
X A.	Water Resources Development.....	224
X B.	Marine Resources Protection Act of 1990.....	228
XI.	Local Government.....	233
XII.	Public Utilities.....	239
XIII.	Taxation.....	241
XIII A.	Tax Limitation	262
XIII B.	Government Spending Limitation	271
XIII C.	Voter Approval for Local Tax Levies	278
XIII D.	Assessment and Property-Related Fee Reform	280
XIV.	Labor Relations	285
XV.	Usury	288
XVI.	Public Finance	290
XVII.	(Repealed June 8, 1976)	308
XVIII.	Amending and Revising the Constitution	308
XIX.	Motor Vehicle Revenues.....	309
XIX A.	Loans from the Public Transportation Account or Local Transportation Funds.....	313
XIX B.	Motor Vehicle Fuel Sales Tax Revenues and Transportation Improvement Funding.....	316
XIX C.	Enforcement of Certain Provisions	319
XX.	Miscellaneous Subjects	320
XXI.	Redistricting of Senate, Assembly, Congressional, and Board of Equalization Districts	327
XXII.	Architectural and Engineering Services.....	330
XXIII.	(Repealed June 8, 1976)	331
XXIV.	(Repealed June 8, 1976)	331
XXV.	(Repealed November 8, 1949. Initiative measure).....	331
XXVI.	(Renumbered Article XIX June 8, 1976).....	331
XXVII.	(Repealed November 3, 1970).....	331
XXVIII.	(Repealed November 5, 1974).....	331
XXIX to XXXIII.	(No articles have been adopted)	
XXXIV.	Public Housing Project Law.....	331
XXXV.	Medical Research	333
	Index	335